INTRODUCING
The Land Commission Act

Desmond Heap

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INTRODUCING

THE

LAND COMMISSION ACT 1967

(The Book of the Lectures)

BY

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800 Years After 1066 And All That

But they who would ameliorate our public policy or remodel our institutions will never do this well, if at all, unless they fully recognise the character of the materials they have to deal with. The elements of our race are indestructible, even though it be of the mixed character proved by history and the evidence of our own senses. We are what we have been made by successive invasions, successive occupations, and successive additions from various parts of the Continent. The refugees of poverty or religious persecutions to whom we have given a home must outnumber many times the entire Norman importation. But it is plain to the bluntest senses and the dullest understanding that the men who conquered, held, governed, and built up this country till they were one with it, and were lost in a common unity, are still among us and in us, in our institutions, our laws, our language, our customs, our public spirit, our policy, our very flesh and blood. These are the actual ingredients and these the facts of the case that we have to deal with, and legislation that should ever attempt to mould and fashion our race without caring what it is and what it is made of will utterly and disastrously fail. Nations have their characters, like individuals, and we have ours, though, as in the case of most men, it is various.

From "The Times," October 26, 1866.

CONTENTS

NOTICE AND WARNING

THE Land Commission Act 1967 received the Royal Assent at 6.35 p.m. on February 1, 1967. It will come into operation on " the first appointed day " which has been declared, by the Minister, to be April 6, 1967. Throughout this book there are frequent references to this particular date, namely, April 6, 1967. If, by chance, the first appointed day under the Act were to be postponed to some later date, then the reader will remember, of course, to substitute any such later date for " April 6, 1967," wherever this expression appears in this book.

Many sets of regulations will need to be made for the full functioning of this Act. At the moment of writing the following subsidiary legislation is proposed:

The Land Commission (First Appointed Day) Order;
The Material Development (Exceptions) Regulations;
The Betterment Levy (Notification) Regulations;
The Betterment Levy (Waiver of Interest) Regulations;
The Betterment Levy (Material Development) (Planning Assumptions) Regulations;
The Compulsory Acquisition of Land (Development Plan) (Specification) Regulations;
The Vesting Declaration (Prescribed Forms) Regulations;
The Betterment Levy (Minerals) Regulations;
The Betterment Levy (Case F.) Regulations;
The Schedule 4 (Improvements) Regulations;
The Betterment Levy (Tenancies and Reversions) Regulations;
The Equitable Interest and Estate Duty Regulations.

The Land Commission Act 1967 applies to England, Wales and Scotland but not to Northern Ireland (s. 102 (2)). The foregoing regulations apply to England and Wales. Corresponding regulations will be made for Scotland.

FOR THE READER'S DIGESTION

A Table of Important Dates Under The Land Commission Act 1967

September 22, 1965	—	White Paper Day; date of publication of "The Land Commission" (Cmnd. 2771).
September 23, 1965	—	The date immediately following the above.
December 29, 1965	—	Date of publication of the first Bill for the Act (see s. 83).
August 1, 1966	—	Important to House Builders buying land after this date for housing development (see Sched. 5, para. 11).
January 1, 1967	—	Abolition after this date of additional compensation on compulsory purchase—the last of the "Lavender Hill Case" (see s. 86).
April 6, 1967	—	The first appointed day; the Act in operation (see s. 1 (1)).
October 6, 1967	—	Important to House Builders buying land after August 1, 1966 (see Sched. 5, para.11).
? ? ?	—	The second appointed day; yet to be stated (see ss. 6 (4) and 22 (1)).

TABLE OF REFERENCE

CHAPTER 1A

BEGIN HERE

I would be the last person to say I understand the Bill—The Lord Chancellor, December 6, 1966, during the House of Lords Debate on the Land Commission Bill.

0–01 THE object of this book, as its title states and suggests, is *to introduce* the reader to the Land Commission Act 1967.

This is an important Act which no one with a house (however modest) or plot of land (however small) can afford to ignore.

This book seeks to explain the Act in outline. It does not pretend to tell the whole story of the Act in every wearisome detail. (Nor could it in the compass of 126 pages.) It is not a long book and its best impact will be made if it is read straight through. Indeed, when handling a book like this, the best advice comes (as usual) from "Alice"—"'Begin at the beginning,' the King said gravely, 'and go on till you come to the end; then stop'."

In preparing such a book as this one cannot help recalling the words of a distinguished lawyer and politician when he said in Parliament some few years ago:

> *"After close consideration of the Bill and the Explanatory Memorandum upon the Bill, I am now convinced that not only do I* NOT *understand the Bill—I do not even understand the Explanatory Memorandum."*

Notwithstanding this *cri de coeur*, it is still felt that there *is* need for urgent but simple explanation of this complex piece of legislation; some explanation uncluttered with detail.

Accordingly, the *raison d'être* of this book is to paint the legislation *in outline*; to describe *the shape* of the legislation—*the leitmotiv* of the whole affair.

One thing, the author feels, is absolutely sure. It is that those who do not have a running knowledge of the shape of this legislation—its outline, its contours, the direction in which its purpose and intent are moving—these people will never have the ghost of a chance of mastering its details. In other words, those who dive

into the deep end of this Land Commission Act without prior conditioning on the nursery slopes, will assuredly drown!

Undoubtedly then the first thing to get is an outline knowledge of the Act. With this knowledge one may seek further and with advantage; without it one will probe deeper but in vain.

* * * * *

0–02 That this new land legislation is difficult cannot be doubted. Those who find it not only difficult but disheartening, even depressing, may take comfort from the exchanges (in Standing Committee E of the House of Commons when the Bill for the Act was before that Committee) passing between the people, the legislators, who are responsible for enacting this sort of thing.

The following *divertissements* took place in Standing Committee E between Hon. Members.

> *" It has been my practice in years past to listen on many occasions to members of the legal profession. They have presented their cases very ably on many occasions. During the past few sittings of this Committee, however, a lot of tripe has been talked . . .*
>
> *" We have listened in this Committee to members of the legal profession putting their case. I have listened very carefully and tried to follow their arguments but I am as bemused today as I was at the start of the Committee."*—Standing Committee E, col. 897, Mr. Clifford Williams, the Hon. Member for Abertillery.
>
> *" The lawyers are going to have, as much as anybody, the task of trying to explain what this Act means to their clients and it is going to be a very formidable task and if we have not been clear in what we have said, if our arguments appear to have been involuted and difficult, I do not think that is our fault because the provisions of the Bill are difficult."—Ibid.*, col. 902, Mr. Walter Clegg, the Hon. Member for North Fylde.
>
> *" When I first saw the Schedule (to the Bill) it reminded me of an advertisement that I once saw for a film. It was headed, ' The Thing from another World.' Below it said, ' The Imagination Boggles ' and I must admit that the more I*

read Schedule 5 the more my imagination boggled"—ibid., col. 915, Mr. Clegg again.

Lastly the Minister for Land and Natural Resources himself, Mr. Frederick Willey, said on the Second Reading of the *first* Bill for the Act (*Hansard*, Vol. 723, col. 712):

> *"This is a complex Bill and I am driven to the conclusion that any legislation about land is complex. This Bill is a very competently drafted piece of technically difficult legislation and with care and attention it is intelligible."*

We shall see. It is hoped that the following chapters may help those who now feel befogged by the 189 pages of the Act itself (price 14s. from H.M.S.O.) to see, if not *all* things clear, at least *some* things clearer than before. It is certainly important that they should see things as clearly as possible for, let there be no doubt about it, anybody owning a bit of land, whether built or unbuilt, should, in his own interest, get to know as much as he can about the Land Commission Act 1967 and that right quickly.

Accordingly, this book has been written in as simple terms as the author could muster in the hope that it will be of assistance not merely to sophisticated professional people like surveyors, architects, auctioneers, valuers—perhaps even lawyers—but also to property owners of all kinds and whether they own large holdings or little ones.

* * * * *

0–03 In preparing the pages which follow the author is indebted to many people with whom he has had the opportunity of discussing (not to say arguing about!) some of the more hidden mysteries of the Act. He is grateful to them all and particularly to Mr. William Hall, D.F.C., F.R.I.C.S., F.A.I., the Chairman of the General Practice Committee of the Scottish Branch of the Royal Institution of Chartered Surveyors, and Mr. Thomas Hoyes, M.A., PH.D., DIP.EST. MAN.(Cantab), A.R.I.C.S., A.A.I., from both of whom he learnt a great deal about the examples quoted in chapters 7 to 11.

* * * * *

0–04 If the reader has got thus far he will have realised that this chapter (which is numbered 1A) is really the sort of apologia or

warning which one customarily finds set out under the title "PREFACE." Unfortunately, nothing is more off-putting than the title "Preface." Nobody ever reads a Preface. It is hoped that by avoiding "Preface" these paragraphs will not have been skipped by the reader.

If he *has* read them he will now appreciate not only the author's uphill struggle in trying to compress the meaning of the Land Commission Act into the 126 pages to which the author deliberately restricted himself, but also what he, the reader, is in for as he bravely goes forward into the hurly-burly of the pages which follow. The reader has been warned!

The idea of the book came from a suggestion that some record should be made from the series of lectures which the author gave, by invitation, on the Land Commission Bill when it was going through Parliament. These lectures created what seemed (certainly to the lecturer) to be an astonishing amount of interest in a dull, if important, subject. Indeed, in the end it appeared that the lectures were attended by some 14,000 people. The book derives from the notes prepared for the lectures and is, accordingly, sub-titled "The Book of the Lectures."

D. H.

At the COMPTROLLER AND CITY SOLICITOR'S OFFICE,
Guildhall,
In the City of London.
February 1, 1967.

CHAPTER 1

THE LAND COMMISSION AND THE STORY BEHIND IT ALL

1. The Land

1–01 THERE is a great deal of difference between real and personal property. It is the difference between movable and immovable property. It is the difference between *land* on the one hand and *chattels* on the other hand.

Land is always land though it may differ in appearance and may even, as mentioned in many Acts of Parliament, be " covered by water." Chattels are of an infinite variety and are capable of creation and re-creation and of increase. Land cannot be created except by the splendid Dutch who bring it in from the sea (which they then fence out) nor can it be pushed around. (Bulldozers merely skim off the top—they do not, and cannot, remove the *site*!) Land can be used, and re-used, developed and redeveloped but, in the ultimate analysis, it remains basically unchanged in nature and constant in area.

Without proceeding further with this lecture it will be clear that there is a fundamental difference between land and all other kinds of property. This is why many (including the present Government) have said that land should always be treated differently from any other commodity. Efforts are now afoot to ensure that exactly this is now going to be done.

1–02 Before the General Election of 1964 it was a plank in the Labour Party's platform that all land about to be developed should be nationalised. The idea was that the land should be purchased (compulsorily if need be) by some Holding Authority who would pay for the land its existing use value plus a " sweetener " designed to encourage a willing sale by the owner to the Holding Authority who, having acquired the land, would then dispose of it (by leasehold only) to someone who wanted to develop it.

Under this arrangement the owner of the land would not recover the full market value of the land at the time of the sale by reason of the fact that he would be denied some portion of the development

value of the land at the time of the sale, such development value being the increase in value of the land over and above its existing use value brought about by the prospect of development. This increase in the value of the land not accruing to the vendor would, in fact, become automatically vested in the Holding Authority. Thus would some portion at least of the increase in value of land caused by the prospect of development become vested, along with the land itself, in the public.

Such, in a nutshell, were the proposals of the Labour Party before the General Election of 1964 which the Labour Party won. Thereafter it is clear that further thought was given to this matter as is evident from the contents of the White Paper entitled "The Land Commission" (Cmnd. 2771) published by the Government on September 22, 1965, an important date for the landowner.

It is no longer suggested that *all* land about to be developed should be nationalised and this for the simple reason that it would be "administratively impracticable for the Land Commission" (the name of the Holding Agency referred to above) "to buy all land needed for development at the start of their operations" (White Paper, para. 9).

Nevertheless, the Land Commission as proposed in the White Paper is to be invested with comprehensive powers of compulsory purchase which will enable them to acquire any land on which there has been a *planning decision* that it is suitable for development (White Paper, para. 14).

1–03 There is, of course, no knowing, as and when the Land Commission gets increasingly into its stride, how much land the Land Commission will seek to acquire. There appears to be no limit to the amount which they *might* acquire except such limit as is dictated by lack of administrative and technical staff requisite for the carrying out of all the valuation and conveyancing procedures inseparably associated with the matter of transferring land from one person to another. It seems clear from ministerial pronouncements that the Land Commission will buy land in advance of particular requirements and will thereby build up a "land bank" (as it has been called) from which the Commission can draw from time to time in the future as the need for development in any particular area becomes more pressing.

But if the new Land Commission is not to acquire *all* land about to be developed (as was the original intention) then, *ipso facto*,

some land about to be developed is *not* going to be acquired by the Land Commission. What then is to happen to land about to be developed but which the Land Commission, for one reason or another, is unable or unwilling to acquire? Is this land as between the vendor and the purchaser to change hands at full market value with the vendor keeping in his own pocket the full amount of the market value?

If this were to be accepted then there would indeed be a two-price system (as under the Town and Country Planning Act 1954) relating to the sale and purchase of land. There would be the *full-market-value-rate* payable as between a vendor selling by agreement to a private purchaser, and there would be the *less-than-full-market-value-rate* payable as between a vendor selling by agreement (or under compulsion) to the Land Commission, the Land Commission paying (as mentioned above) the existing use value only of the land plus a sweetener.

To prevent any such two-price system breaking out once again the proposal is, in those cases where land about to be developed is *not*, for one reason or another, acquired by the Land Commission but is acquired in the normal course by a private purchaser for development, that the purchaser for development should pay to the vendor the full market value of the land at the time of purchase but that, in the vendor's hand, such full market value should be liable to a levy payable to the Land Commission. Thus in such a case the vendor of the land would derive no greater financial benefit from the sale of his land to the private purchaser for development than he would have done had he sold the land to the Land Commission. What does this levy amount to?

2. The Levy

1–04 The levy, put quite simply, is a tax payable to the Land Commission by the vendor of land on the sale of his land for development (it may also be payable by the developer of land on his carrying out development).

In these days of town planning control all land has two values. First, it has its value for the purposes of its existing use. Secondly, assuming the land is in the privileged position of having attached to it planning permission for development, the land has a second value known as its value in the open market (or market value)

which is the value of the land with the prospect of development (as expressed in, and conditioned by, the relevant planning permission) attached to it. The difference between *the existing use* value of the land and *the market value* of the land is *the development value* of the land.

The development value of some land (especially land in the south and south-east of England) has, of late, been notoriously high and it is now Government policy to ensure that the whole of this development value shall *not* go into the pocket of the vendor.

This is to be achieved, in a case where the Land Commission do *not* buy the vendor's land, by the imposition of a levy payable to the Land Commission by the vendor of the land when he receives, from a purchaser of the land for development, the full market value of the land.

1–05 The philosophy underlying the levy was explained by the Minister of Land and Natural Resources (when the Land Commission Bill was being debated in Standing Committee E of the House of Commons) in the following terms:

> " I am sure that most people will agree with the view of the Government that there is something special about development value which justifies special treatment. The reasons for taking a share in development value are not merely that it provides a convenient source of revenue or that there is a need to achieve fairness between one taxpayer and another, or that purchasing power must be mopped up in order to prevent inflation. This value is more than any other value created by the community rather than by the efforts of the landowner, and it is morally unjustifiable that he should be able to profit from it at the expense of the community. The community is therefore entitled to a claim upon the development value, and the amount that should be taken is limited by practical grounds and not by the economic factors that govern the level of ordinary taxes.
>
> " For this reason it would be administratively impracticable to use the normal tax system to deal with development value. The levy on development value must be taken when the value is realised, not in terms of the net gain to a man's income in a financial year. There is no reason why he should make more profit out of the development value created by the community on his land because of losses he has incurred in other activities.

There is the further point that the levy might result in land being withheld from the market, and it is clearly right that the body responsible for the levy should be armed with compulsory purchase powers. This points inevitably to a separate body from the Board of Inland Revenue as the appropriate organisation for collecting the levy."

1–06 The levy is to be 40 per cent. of the development value of the land but the Government intend that this figure of 40 per cent. shall be increased progressively (and at reasonably short intervals) to 45 per cent. and then to 50 per cent. with a reserve power being vested in the Land Commission to increase the rate still further if they so desire (White Paper, para. 30).

The levy is a tax on land but it is different from the development charge of the Town and Country Planning Act of 1947 because, in the first place, it does not take up *the whole* of the development value of land but only a percentage thereof whereas the development charge took up the entire 100 per cent. of the development value, thereby destroying incentive on the part of a developer. Secondly, the levy will *normally* be paid by the vendor of land (out of moneys already in his hand) upon selling his land for development and not by the developer of the land.

This is the normal routine but it is important to note that if a developer, having purchased land (whether for development or otherwise), refrains from developing it for some time during which period the development value of the land *rises still further*, when the developer at last comes to develop the land he may *then* find himself liable to pay, on commencing development, a levy on such increase in the development value of the land as has accrued to the land between the date of his purchase of the land and the date of his development of the land (White Paper, para. 26).

1–07 Whenever the levy becomes payable it will be payable only on such value of the land as is attributed to the prospect of " material development " (White Paper, para. 27). If that which is being carried out is not *material* development then the whole of the Act may be ignored. Thus the definition of " material development " is of first rate importance when construing this Act. It is a definition which is examined in detail in Chapter 2; here it need only be said that, put briefly, " material development " covers *all* development of land except:

(1) *development permitted* under the Town and Country Planning General Development Order 1963; and

(2) *development covered* by the Third Schedule (except para. 4) to the Town and Country Planning Act 1962—(this is development which is notionally included within the concept of existing use value);

(3) *development excluded* from liability to levy under the Material Development (Exceptions) Regulations 1967 to be made by the Minister under the Land Commission Act 1967 and coming into operation on April 6, 1967.

3. The Land Commission

1–08 The Land Commission which is to be responsible for the working of the Land Commission Act 1967 is a new statutory body established by the Act itself (s. 1, Sch. 1). The Commission will consist of such number of members not exceeding nine as the Minister of Land and Natural Resources and the Secretary of State for Scotland may from time to time determine. One of the members will be appointed Chairman of the Commission and another will be appointed Deputy Chairman.

The Commission is a body corporate having perpetual succession and a common seal. The Commission will begin operations on April 6, 1967—that is to say, on "the first appointed day," the day the Act comes into operation.

The Commission are required at all times to comply with directions given to them by the Minister or the Secretary of State for Scotland. It is interesting to note that in connection with the acquisition and disposal of land such directions may be of a *general or a specific* character whilst in connection with matters relating to the betterment levy (or, indeed, to any other matters under the Act) the directions may be of a *general* nature only (s. 1 (3)).

1–09 There is to be established a Land Acquisition and Management Fund out of which all sums required for the acquisition and management of land by the Commission under Part II of the Act are to be taken and into which all receipts arising from land are to be paid (s. 2 (1) and (2)).

All the administrative expenses of the Commission, together with the expenses of other government departments in relation to

the Commission's dealings with land, are also to be paid out of the Fund (s. 2 (3)).

Any surplus moneys for the time being standing in the Land Acquisition and Management Fund may, by direction of the Minister, be paid out of the Fund and into the Exchequer (s. 2 (4)). It has never been stated what any such surplus moneys are to be used for. The gross yield of the betterment levy is estimated at £80m. in a full year on the basis of a 40 per cent. levy.

All sums of money received by the Land Commission as a result of the collection of levy under Part III of the Act are to be paid directly into the Exchequer (s. 4 (2)). Again, it has never been declared with any degree of particularity what the levy is to be used for.

The Commission are to prepare annual accounts and an annual report and both these matters are to be laid before Parliament (s. 5).

The Government have estimated that the administrative costs of the Land Commission will be around £4m. gross per year to which will be added £3m. per year as the estimated cost to the Valuation Office of the Inland Revenue. The Commission, it has been stated officially, will have a Headquarters Staff of 200 persons and a total establishment of 2,000.

11–10 The Commission have power to require from occupiers of land and receivers of rent all requisite information as to the ownership of interests in land (s. 94 (1)). There is a penalty of £50 for failure to comply with the Commission's requirement (s. 94 (2)).

The Commissioners of Inland Revenue are authorised to furnish to the Land Commission any documents produced to them under the Finance Act 1931 notwithstanding obligations as to secrecy otherwise imposed upon the Commissioners by statute or otherwise (s. 95).

4. Where to Find the Land Commission

–11 The Head Office of the Land Commission will be at Newcastle-upon-Tyne and there will be eleven Regional Offices situated respectively in the following places, namely: Birmingham, Bristol, Croydon, Ipswich, Leeds, Newcastle-upon-Tyne, Nottingham, Reading, Salford, Cardiff (for Wales) and Cumbernauld (for Scotland).

Head Office of the Land Commission:
Government Buildings, Kenton Bar,
Gosforth,
NEWCASTLE-UPON-TYNE

Regional Offices of the Land Commission

Region	Area	Office Address
Northern	Cumberland, Westmorland, Northumberland, Durham, Yorkshire, North Riding.	Warwick House, Grantham Road, Jesmond, NEWCASTLE-ON-TYNE, 2.
North-Western	Lancashire, Cheshire and High Peak District of Derbyshire.	Aldine House, West Riverside, SALFORD, LANCS.
Yorkshire and Humberside	Yorkshire East and West Ridings, Lincolnshire, Lindsey.	First at Park House, St. Paul's St., LEEDS. Later at Royal Exchange Buildings, City Sq., LEEDS.
East Midland	Lincolnshire, Kesteven and Lincolnshire, Holland. Rutland, Leicestershire, Nottinghamshire, Northamptonshire, Derbyshire except High Peak District.	Birkbeck House, Trinity Sq., NOTTINGHAM.

Region	Area	Office Address
West Midland	Shropshire, Herefordshire, Staffordshire, Worcestershire, Warwickshire.	Cumberland House, 200 Broad St., B'HAM 15. Later at Auchinleck House, Five Ways Centre, B'HAM 15.
Eastern	Norfolk, East and West Suffolk, Huntingdonshire, Cambridgeshire including Isle of Ely, Bedfordshire, Hertfordshire, Essex.	St. Francis Towers, Greyfriars, IPSWICH, SUFFOLK.
London and South-Eastern	Greater London, Surrey, Kent, East Sussex.	Concord House, 454/458 London Rd., CROYDON.
Southern	Oxfordshire, Buckinghamshire, Berkshire, Hampshire, including Isle of Wight, West Sussex.	Forbury House, The Forbury, READING, BERKS.
South-Western	Cornwall, Devon, Dorset, Somerset, Gloucestershire, Wiltshire.	Bridge House, Clifton, BRISTOL.
Wales	Wales including Monmouthshire.	Ty-Glas Avenue, Llanishen, CARDIFF.
Scotland	Scotland	Town Centre, Cumbernauld, DUMBARTONSHIRE.

Chapter 2

DEFINITIONS

1. A Collection of Specially Defined Expressions

2–01 The complex nature of the Land Commission Act 1967 may be gleaned from the fact that it contains so many words and expressions which are given specialised, and sometimes quite extended, definition and meaning for the purposes of the Act or, sometimes, for the purposes of that particular Part of the Act in which the words or the expressions appear.

It may be stated, if only as a matter of interest, that such words and expressions carrying such specialised meaning and definition amount to no less than 188. They have all been collected together and are set out for the regalement and the informing of the reader in the Appendix to this book.

This is not done in an effort to frighten the reader but merely to warn him what he is up against when he comes to deal with this Act. Indeed, if the definitions are going to frighten him, then the Act is probably going to kill him and he should read no further!

It is felt that the reader might do a good deal worse than cast his eye, without further ado, over the collection of definitions in the Appendix. By so doing it is not expected for a single moment that he will acquire a firm knowledge of each and every one of them at first reading. Nevertheless, it will not be time wasted. By casting his eye over the list—perhaps once or twice or maybe three times—he will become increasingly familiar with the styling of these special words and expressions and, accordingly, when he comes across them in the body of the Act he will at once remember that things are not necessarily what they seem to be at first sight. If he does not remember this then he will surely find himself in trouble later on!

2. Material Development and Liability for Levy

2–02 One specially defined expression which, it is thought, could usefully be investigated and discussed in these early pages is the

expression " material development." There is a good reason for saying this. " Material development " is probably the most important of the many specially defined expressions in the entire Act. If the whole weight and import of the Town and Country Planning Act 1962 may be said to turn upon the meaning of " development," then it may equally well be said that a great deal (though by no means all) of the Land Commission Act 1967 turns on the definition of " material development."

As will be shown in Chapter 3, the levy which the Land Commission are set to collect under the Act is a levy (or tax) which bites into the development value in land (and not into any other value) when that development value is realised.

Putting the matter briefly it may be said that levy arises:

(1) upon the realisation of any increase in the development value of land, or

(2) upon the realisation of compensation for any decrease in the development value of land.

There are a variety of ways in which the development value in land may be realised. These are dealt with briefly in Chapter 3 and in more detail in Chapters 7 to 12 inclusive.

One of the ways in which development value in land is realised is by carrying out development of the land. Accordingly, developers of land will be keen to know as soon as possible just how much development of land (if any) they can carry out without getting themselves involved in levy.

This, at once, brings us back to the matter of " material development," for it may be stated at once that levy is only charged upon the carrying out of development when that development happens to be what the Act calls " material development."

What, then, is this particular kind of development which causes liability to levy to arise? It is defined in section 99 (2) of the Act. However, before consideration can be given to the meaning of " *material* development " it is first necessary to know what constitutes " development."

3. What is " Development ' ?

2–03 By virtue of section 99 (8) of the Land Commission Act the provisions of section 221 (1) of the Town and Country Planning

Act 1962 are made to apply to the Land Commission Act 1967 just as they apply to the Town and Country Planning Act itself. This means that expressions which are common to both these Acts and which do not carry any specialised definition in the Land Commission Act 1967 have the meaning assigned to them by the Town and Country Planning Act 1962.

Accordingly, for the meaning of " development " as used in the Land Commission Act 1967 it is necessary to refer to the Town and Country Planning Act 1962 whereby (by virtue of section 221 (1) and section 12 of that Act) " development " means (briefly) " the carrying out of building, engineering, mining or other operations in, on, over or under land, or the making of any material change in the use of any buildings or other land." (All this is subject to the requirements contained in section 12 (2) and (3) of the 1962 Act.)

Armed with a knowledge of the meaning of " development " under the 1962 Act, attention may now be paid to the meaning of " material development " under the 1967 Act.

4. What is " Material Development " ?

2–04 Section 99 (2) of the 1967 Act provides that " material development " means *all* development *except* development falling into one or other of the following three categories, namely:

(1) development (popularly called " permitted development ") for which planning permission is granted by the Town and Country Planning General Development Order 1963, provided always that the development is carried out so as to comply with any condition or limitation subject to which planning permission is granted under that Order (s. 99 (2) (*a*));

(2) development falling within all the tolerances (except one) set out in the Third Schedule to the Town and Country Planning Act 1962 (s. 99 (2) (*b*)); and

(3) development falling within any class prescribed by the Minister in The Material Development (Exceptions) Regulations 1967 (s. 99 (2) (*c*)).

5. Development which is Free of Levy

2–05 A close consideration of the foregoing exceptions will show that there is quite a deal of development which can be carried out

without being liable in any way to levy by reason of the fact that though it may be development under the Town and Country Planning Act 1962 it is not *material* development under the Land Commission Act 1967.

(a) *Permitted Development under the General Development Order* 1963

2–06 Without pretending to deal in the least bit exhaustively with these exceptions from the meaning of " material development," it will be remembered that under the General Development Order of 1963 the following development (*inter alia*) may be carried out without fear of levy:

Under Class I—a good deal of development within the curtilage of a dwelling-house.

Under Class II—sundry operations relating to gates, fences and walls.

Under Class III—a variety of changes of use from one kind of shop to another.

Under Class IV—erection of temporary buildings and the initiation of temporary uses of land.

Under Class VI—erection of certain agricultural buildings.

Under Class VII—forestry buildings and works.

Under Class VIII—development for certain industrial purposes.

(b) 1962 *Act Third Schedule Development*

2–07 Similarly, under the tolerances of the Third Schedule to the Town and Country Planning Act 1962 a great quantum of development which is regarded as falling within the ambit of the existing use of land may, again, be carried out without fear of levy. These tolerances embrace a good deal of rebuilding work (including the making good of war damage and the replacement of certain destroyed or demolished buildings) and the enlargement and improvement (within certain limits) of buildings.

The precise wording of s. 99 (2) (*b*) of the Land Commission Act 1967 (according freedom from levy to nearly all development comprised in the Third Schedule to the 1962 Act) is in the following terms:

" development falling within any of paragraphs 1, 2, 3 and 5 to 8 of Schedule 3 to the Act of 1962 as read with Part III

of that Schedule and with section 1 (4) of the Town and Country Planning Act 1963."

It will be noted that paragraph 4 of Schedule 3 to the 1962 Act does not appear in the above quotation from s. 99 (2) (*b*) of the Land Commission Act 1967. The said paragraph 4 relates to matters of agriculture and the question of exemption from levy of agricultural development is still under consideration. The Material Development (Exceptions) Regulations 1967 do, however, contain certain exemptions in favour of buildings, works and uses of land associated with agriculture.

(c) *The Material Development (Exceptions) Regulations* 1967

2–08 Finally, under The Material Development (Exceptions) Regulations 1967 the Minister of Housing and Local Government is prescribing a large area of development which, again, can be carried out without fear of levy by reason of the fact that such development is not to be regarded as material development.

Matters included in The Material Development (Exceptions) Regulations include:

(1) advertising;
(2) agriculture;
(3) market gardens;
(4) certain changes of use;
(5) rebuilding or enlarging (within limits) and improvement of dwellinghouses;
(6) conversion of houses into separate dwellinghouses;
(7) certain industrial development;
(8) operations for searching and boring for petrol;
(9) use of land for physical recreation;
(10) pipe-line works;
(11) development by electricity and gas undertakings;
(12) sundry minor operations;
(13) temporary buildings and uses.

What the Material Development (Exceptions) Regulations have done they can, of course, undo and re-do in different fashion if the Minister so desires. Accordingly, the development freed from levy under these Regulations is liable to alteration at any time, by way of extension or reduction in quantity, by means of further Regulations made by the Minister.

CHAPTER 3

BETTERMENT LEVY

It has recently been found that the shales of unctuous clay overlying the iron-stone deposits of the Yorkshire moors, in the North Riding, can be made to produce a mineral oil, similar to petroleum, at a cost of 6d. per gallon.

This last discovery, coming quickly upon that of coal and iron-stone, has raised the value of land. Last week a small property of about 150 acres, for which—it being fit only for grouse shooting—5s. per acre was thought too much a few years ago, was sold for nearly 60s. per acre.

1. Taxing Development Value by Levy

3–01 The foregoing is precisely the thing at which Part III of the Land Commission Act 1967 strikes. Indeed, it is at this sort of thing that the legislature has been striking over and over again throughout the present century but never with such incisive violence as is to be found in Part III of the Land Commission Act.

The problem of recouping for the sake of the public as a whole something of that increase in value brought about by the finding (as reported above) of oil in the Yorkshire moors has so far proved to be an intractable problem. Part III of the Land Commission Act amounts, undoubtedly, to a terrific girding up of legislative loins for attack on this problem—a problem which in the last few years has been highlighted by the dramatic increases in the development value of land, particularly of land in the south of England. The problem itself, however, is an old one and, clearly, there is nothing new under the sun because the quotation with which this chapter starts, relating to oil in Yorkshire, is actually taken from the pages of *The Times* for November 30, 1865. One hundred and two years later the Land Commission Act sets out to smack this problem flat on the head once and for all.

Part III of the Land Commission Act embraces sections 27 to 85 inclusive, that is to say, no less than 59 sections, together with

an attendant 10 Schedules—Schedules 4 to 13 inclusive. All these sections and all these Schedules are of a highly complex nature and will need the closest and most careful reading.

2. Rate of Levy

3–02 Part III of the Act provides (s. 27) that where the development value, or some of the development value, contained in any land is realised on or after the first appointed day (April 6, 1967), then there shall be a levy imposed upon such realisation.

The levy will be at a rate prescribed by the Minister of Housing and Local Government with the consent of the Treasury (s. 28). This will be done by means of an Order and no such Order can come into force unless it has been approved by positive resolution of the House of Commons (s. 28 (3)).

Thus, the Act itself does not say what the amount of the levy will be but the Minister of Land and Natural Resources (as he then was) has stated that in the first place it will be 40 per cent. of such development value as is realised, rising reasonably quickly to 45 per cent. and then to 50 per cent. There is, however, nothing in the Act to stop it going up to 100 per cent. if this were thought right. It is inconceivable that anybody would think this right after the debacle of the development charge which, under the 1947 Act, was fixed at 100 per cent. in all cases. If the financial provisions of the 1947 Act failed, one does hope that it will be possible to say that they failed but not wholly in vain.

It is provided in section 27 (1) of the Act that the levy dealt with in Part III is " to be called ' betterment levy '." *His dictis*, the Act, never again refers to it as " betterment levy " at all but always as " levy." Accordingly, in this book, this new charge, impost, tax (whatever expression is preferred) will be referred to simply as levy.

3. The Three Basic Principles applying to Levy

3–03 Three basic principles, according to the Minister, attach to the imposition of this levy and they are as follows.

First, the levy is to be charged on development value only and not upon any increases in the value of land for its current use.

Thus, the man who bought a dwelling-house some years ago for a thousand pounds and now finds himself able to sell it as a dwelling-house for ten thousand pounds (because that happens to be the going-value of dwelling-houses in the particular area where that dwelling-house is situated) need not concern himself unduly with Part III of this Act. (The sale will, however, have to be reported to the Land Commission.)

It would, however, be a very different story if this particular dwelling-house had attached to it a large acreage of land much larger than could reasonably be expected to sustain such a dwelling-house, with the result that the purchaser who paid ten thousand pounds for the dwelling-house and its attendant land did so because he had detected that in this house and its attendant land there was a prospect of development.

Nor is it really a matter of the house with the very large garden capable of being developed by building therein, say, a couple of small houses. This is *lateral* development. There is, however, *vertical* development and there is thus the problem posed by the man who pays a large price for two two-storeyed houses (not capable of further development laterally because of adjacent buildings) but who pays the high figure because he sees a prospect or more intensive development of the site by the knocking down of the two houses and their replacement by high-rise flats.

3–04 When can it be said categorically of *any* site that it has achieved its absolute maximum development potential and that there is no more development value whatsoever to be got out of it? When indeed? It is a nice question and one of which more will be heard under the Land Commission Act.

In this matter of selling dwelling-houses it would appear (to this writer at least) that there are going to be some interesting investigations to determine exactly what it is that motivates the purchaser of a dwelling-house to give for it an enhanced price, considerably higher than that paid by the vendor of the house when he bought it years previously. How big is the garden, or the pleasaunces, or the land, which *goes with* any given house? What sort of acreage can a dwelling-house with eight bedrooms, three bathrooms, four reception rooms, a hall and principal staircase together with all requisite back stairs and kitchens command and yet let it still remain arguable that the house is merely being buttressed by the requisite area of land appropriate to the station in life to which that

particular dwelling-house has been accustomed? Where does one draw the line, or maybe, the fence? It looks as though there will be some hard thinking about all this and maybe some heartbreaking drawing of lines between the land which, on the one hand, may be said " to go with " the house and the over-plus of land which, on the other hand, may be said not to have any indivisible or inseparable association with the house and therefore can be regarded as land capable of separate consideration as being ripe for development.

3–05 The second basic principle attaching to the levy under Part III of the Act is that, in the words of the Minister on the second reading of the Bill for the Act, " the development value on which levy has been paid will not be chargeable again."

3–06 The third principle is that the levy is to be paid by the person who realises the development value in land and it is in this respect that the Act differs from the provisions of the 1947 Act relating to development charges.

4. When does Levy Arise?

3–07 When does levy arise? This has already been mentioned in Chapter 2 but may be stated again here. The answer is that levy arises

(1) upon the realisation of any increase in the development value of land, or

(2) upon the realisation of compensation for any decrease in the development value of land.

With this basic statement firmly in mind attention may now be paid to Part III of the Act.

5. The Six Chargeable Acts or Events

3–08 Part III of the Act gives six cases in which development value is taken to be realised for the purposes of attracting levy. These six cases in which the impingement of levy occurs are called " chargeable acts or events " (s. 27 (3)). They are itemised as Cases " A " to " F " respectively in section 27 (2) of the Act. Put briefly the six cases are as follows:

CASE A. The sale of a freehold or of a tenancy on or after the first appointed day (s. 27 (2) and s. 29).

CASE B. The creation of a tenancy on or after the first appointed day (s. 27 (2) and s. 30).

CASE C. The commencement of a project of material development begun on or after the first appointed day (s. 27 (2) and ss. 31 and 32).

CASE D. The receipt, on or after the first appointed day, of compensation for revocation or modification of a planning permission or the discontinuance or interference with authorised development by an Order made under the Town and Country Planning Act 1962 (s. 27 (2) and s. 33).

CASE E. The grant of an easement or the release of an easement or restrictive right on or after the first appointed day (s. 27 (2) and s. 34).

CASE F. The occurrence, on or after the first appointed day, of such other acts or events as are designated as chargeable acts or events under regulations made by the Minister under section 35 of the Act (s. 27 (2) and s. 35).

The Minister is proposing to make the Betterment Levy (Case F) Regulations 1967 to come into operation on April 6, 1967.

6. Notification to Land Commission

3–09 As has already been said, whenever development value is realised the liability to pay levy falls upon the person who benefits in the realising of the development value (s. 36).

In order that the Land Commission (to whom levy is to be paid) may know exactly what is going on, provision is made for the notification of chargeable acts or events to the Land Commission (ss. 37, 38, 39, 40, 41 and 42). The Betterment Levy (Notification) Regulations 1967 which come into operation on April 6, 1967, prescribe the manner in which the various chargeable acts or events are to be notified to the Land Commission.

The Land Commission (whether or not there has been a notification to them (s. 43 (1)) can call for information and documents if they think these requisite in order to become fully informed about what is going on (s. 43). There are penalties

for failing to give information (s. 81 (2) (3) and (4)) and for knowingly or recklessly giving false information (s. 81 (5)).

7. Notice of Assessment of Levy

3–10 The Land Commission will work out the assessment of levy and serve a "notice of assessment of levy" accordingly (ss. 44 and 45). Such a notice may be served at any time within six years of the chargeable act or event on which it is based (s. 44 (3) and (4)). But in the event of the death of the person liable for levy, the notice must be served on his personal representatives within three years of his death (Sched. 12, para. 5).

The recipient of an assessment of levy may, within two months of the notice of assessment, object to it (s. 46) and the assessment may, in consequence, be withdrawn by the Land Commission (s. 47 (1)). If it is not withdrawn the objection may be referred by either party to the Lands Tribunal for settlement by the Tribunal (s. 47). The Tribunal may not increase the levy (s. 47 (3) (*b*)). The objection may be settled by agreement between the parties (s. 48).

8. Operative Assessment and Payment of Levy

3–11 Once an assessment of levy becomes operative (s. 49) the levy becomes due at the end of thirty days (s. 50), and, if it is not then paid, interest becomes payable at the rate prescribed for the time being by the Treasury (s. 51), though regulations may provide that in certain cases no interest need be paid or that interest may be reduced (s. 51 (4)). Any unpaid levy is recoverable by the Land Commission as a simple contract debt (s. 53).

The payment of levy may be postponed or it may be paid by instalments (s. 45 (2)), in either of which cases the Land Commission may call for some form of security (s. 52).

Where the payment of levy is postponed interest will be payable except in cases where, by regulations, the Minister provides otherwise. The Minister is making The Betterment Levy (Waiver of Interest) Regulations 1967 to come into operation on April 6, 1967, under which interest will be waived on levy the collection of

which is postponed. The regulations will pick out for this kind of favourable treatment certain specified projects of material development where levy will be charged under Case C (see *post*, Chap. 9).

A further assessment of levy can be made if it appears to the Commission *at any time* (there is no time limit to restrict the Commission) that the Commission have undercharged (s. 55).

A levy payer who has paid his levy may apply, at any time *within six years* of the assessment, for relief if he feels he has been overcharged by mistake of fact (s. 54 (1)). The Commission must give " reasonable and just " relief (s. 54 (2)). There is an appeal to the Lands Tribunal (s. 54 (4)).

The foregoing paragraphs give an outline of the six chargeable acts or events upon which so much of the Land Commission Act turns and of the method of assessing and paying levy. They give a lead-in to the more detailed consideration of the six chargeable acts or events and the method of assessing and paying levy which follows in Chapters 7 to 13 inclusive.

9. All is to be Notified—No *de Minimis* Rule

3–12 It will be noted that *all chargeable acts or events* must be notified to the Land Commission. The Act makes no exceptions for trifles. There is no *de minimis* rule in the Land Commission Act. Unless a chargeable act or event falls within the list of exemptions examined in Chapter 4 that act or event *must* be reported to the Land Commission.

Thus the sale of a single terraced house is a chargeable act or event falling in the category of Case A and must be notified to the Land Commission. Notification, of course, does not necessarily mean that levy is payable but the Land Commission *must* be notified and if the person responsible under the Act for making the notification fails to do so he is guilty of an offence and is liable to a fine of £50 on summary conviction (ss. 81 (1) and 82).

As to the number of chargeable acts or events which will have to be notified to the Land Commission in any one year, the interesting remarks of the Parliamentary Secretary to the Ministry of Housing and Local Government (Lord Kennet) speaking in the House of Lords on January 19, 1967 (H.L. Vol. 279, col. 295), may be quoted:

The last set of worries which my noble friend Lord Silkin touched upon related to the likely number of transactions in a year. He mentioned the figure of one million transactions to be considered for levy every year; and here I think I can do something to remove his anxieties. The figure of one million is the number of transactions notified every year for stamp duty. The Land Commission will be using the stamp duty notification procedure as its first sieve, and the large majority of these cases will be sifted by the Land Commission as being obviously not liable for levy. We think at the moment that it is only about 150,000 which are likely to be liable to levy every year, but it is easier to use the existing stamp duty notification procedure as an initial sieve than to impose additional requirements; it will save everybody trouble, both the Land Commission and the citizen, and will make things quicker. The figure of one million transactions for levy every year should not be allowed to run further. Our best guess is something more in the nature of 150,000.

CHAPTER 4

EXEMPTIONS FROM LEVY

1. Introductory

4–01 CHAPTER 3 having broken the ice about the impingement of levy and having referred briefly to the six chargeable acts or events (that is to say, Cases A, B, C, D, E and F which attract levy), maybe the next most interesting thing to consider will be those cases where, under the Act, there is an exemption from levy. The Act provides eight such cases which will now be considered in turn.

At the outset it needs to be emphasised that these eight cases of exemption apply at all times after the Act comes into operation on the first appointed day which is April 6, 1967. Accordingly, a clear distinction must be drawn between these cases of exemption from levy and the transitional matter referred to in Chapter 5 whereby if certain action is taken before April 6, 1967, levy may be avoided in connection with a project of material development begun before, but completed after, April 6, 1967. This latter matter stems from the provisions of section 67 of the Act, under which the requisite action, if it is going to be taken at all, *must* be taken before April 6, 1967.

The provisions now to be discussed relating to *exemptions* from levy apply, as has been said, as from the coming into operation of the Act on April 6, 1967, and throughout the whole period during which the Act remains law.

Thus, while there is urgency about taking action to secure relief under section 67 there is no urgency about any of the exemptions now to be discussed. If the exemptions apply at all they will continue to apply throughout the entire period during which the Act remains law.

2. Local Authorities and other Public Bodies (s. 56)

4–02 Local authorities and certain other public bodies are given complete exemption from levy in connection with any sale or lease

of land which they may make and also in connection with any development of land which they may carry out (s. 56).

The public bodies to which this benefit applies are as follows:

(a) any local authority which (by virtue of s. 99 (8) of the Act) means any local authority as defined in section 221 (1) of the Town and Country Planning Act 1962, that is to say, the council of a county, county borough, county district, the Common Council of the City of London, the Greater London Council, the council of a London borough, and any other authority (except the Receiver for the Metropolitan Police) who are a local authority within the meaning of the Local Loans Act 1875, including any drainage board and any joint board or joint committee if all the constituent authorities are local authorities within the meaning of the Local Loans Act 1875;

(b) any development corporation established under the New Towns Act 1965 or under any enactment repealed by that Act;

(c) the Commission for the New Towns;

(d) the Highlands and Islands Development Board;

(e) the Housing Corporation;

(f) any housing society as defined in section 1 (7) of the Housing Act 1964;

(g) the Scottish Special Housing Association;

(h) the United Kingdom Atomic Energy Authority.

3. Charities (s. 57)

4–03 Charities are exempted from levy if the land with which they are dealing and which would otherwise be liable for levy either

(i) forms part of their permanent endowment; *or*

(ii) has been used wholly or mainly for the purposes of a charity for a period of not less than one year and has not since been used for purposes other than those of a charity which have lasted for more than five years; or

(iii) is to be developed for charitable purposes.

It will be observed that the exemption accorded to charities is limited and is not conferred in the unreserved fashion accorded to

local authorities and certain other public bodies mentioned in section 56.

4. Statutory Undertakers and National Coal Board (s. 58)

4–04 Statutory undertakers and also the National Coal Board are exempt from levy in respect of their operational land, or in respect of land which has been operational land for at least one year and has not since been appropriated to other uses which have lasted more than five years (s. 58).

By virtue of section 99 (8) of the Act "statutory undertaker" means a statutory undertaker as defined in section 221 (1) of the Town and Country Planning Act 1962 and, accordingly, means persons authorised by any enactment to carry on any railway, light railway, tramway, road transport, water transport, canal, inland navigation, dock, harbour, pier or lighthouse undertaking, or any undertaking for the supply of electricity, gas, hydraulic power or water.

5. Housing Associations (s. 59)

4–05 A housing association is exempt from levy in respect of any transaction for which the Minister of Housing and Local Government issues a certificate certifying that it is in the public interest that the transaction should be so exempt. The matter is, thus, entirely one for the Minister himself to control. There is no appeal against the Minister's decision.

For the purposes of this exemption a housing association means (s. 59 (4)) such an association as is defined in section 189 (1) of the Housing Act 1957 and, accordingly, means a society, body of trustees or company established for the purposes of, or amongst whose objects or powers are included those of, constructing, improving or managing or facilitating or encouraging the construction or improvement of, houses, being a society, body of trustees or company who do not trade for profit or whose constitution or rules prohibit the issue of any capital with interest or dividend exceeding the rate for the time being prescribed by the Treasury,

whether with or without differentiation between share and loan capital.

6. Ad Hoc Exemption from Levy under Case "C" if Approved by Land Commission (s. 60)

4–06 Section 60 gives a most useful exemption from levy under Case C which will be welcomed by a transferee of land who contemplates carrying out a project of material development in accordance with a planning permission in force at the date when the transferee obtained the land (s. 60 (1)).

Planning permission needs only to be in force at that date. It does not matter by whom or to whom the permission was granted. It may have been granted to someone other than the transferee who is now seeking exemption from levy for development to be carried out by him.

If, in the circumstances here mentioned, the transferee applies to the Land Commission within thirty days of the date when the land is disposed of to him, then the Commission may, if they so desire, give a direction which will grant exemption from levy under Case C provided the development to be carried out extends to the whole of the land in the disposition and provided further that the transferee commences development in accordance with the aforementioned planning permission within a period of two years from the date of the disposition of the land to him (s. 60 (3)).

The development need not be completed within a period of two years; it is only necessary that the carrying out of the project of development shall have been *begun* before the end of two years (s. 60 (3) (*a*)). As to when a project of development may be said to have been begun, reference should be made to section 64 of the Act which is discussed, *post*, para. 5–17.

The Betterment Levy (Notification) Regulations 1967 (which will come into operation on April 6, 1967) prescribe the particulars which must be included in any application to the Land Commission for exemption, under s. 60 of the Act, from levy under Case C.

In connection with this particular exemption from levy on the part of a developer of land it will be remembered that levy will, of course, already have been paid by the transferor of the land under

Case A or Case B depending on whether he has sold the land freehold, or has granted a lease of the land, to the transferee-developer.

4–07 It must not be forgotten that it will generally be the case that when land is disposed of on sale or lease to a developer, if that developer gets on with his project of development reasonably quickly after obtaining the land he will not be liable under Case C for levy for the simple reason that levy will already have been paid by the transferor of the land on such development value as there was in the land at the time of the disposition of the land by the transferor to the transferee-developer.

On the other hand, if the transferee-developer fails to get on with his development for one reason or another and time passes during which there is a further rise in the development value of land in the area, then in such case, when the developer does at length begin his development, he may *then* find himself liable to pay levy under Case C in respect of any such further increase in the development value of the land as has accrued to the land since the date when the developer got possession of it.

If, however, the transferee-developer gets himself within the confines of section 60 and obtains the requisite direction from the Land Commission under that section, then he receives what is in effect a guarantee that, provided he begins his development within two years of obtaining possession of the land, he will not have to pay any levy under Case C, notwithstanding the fact that in the meantime there may have been some rise in the development value of the land.

It must be remembered that a developer cannot demand exemption under section 60. He is entirely in the hands of the Land Commission who have a discretion under that section whether or not to grant the requisite direction exempting him from levy. There is no appeal against the Land Commission's decision.

7. The Single Family Dwelling-house (s. 61)

4–08 The exemption from levy conferred by section 61 would appear to be of a sentimental nature. It allows an owner of land to build a single dwelling-house—he can only build one of them—on land which he owned on White Paper Day, September 22, 1965, free of levy provided that the dwelling-house is to be used for the owner himself or for an adult member of the owner's family (s. 61 (1)).

A person can be said for the purposes of this exemption to be an adult member of the owner's family if that person is

(a) the owner's wife or husband, *or*

(b) a son or daughter of the owner, or of the owner's wife or husband, who has attained the age of 18, *or*

(c) the father or mother of the owner, or of the owner's wife or husband (s. 61 (5)).

Any reference to a son or a daughter includes a reference to a stepson or stepdaughter, an illegitimate son or daughter and any adopted son or daughter (s. 61 (5)).

It will be observed that the building of a single house for the owner's in-laws is covered by the exemption.

For the purposes of the exemption " the building of a dwelling-house " includes the construction or laying out of a garage, out-house, garden, yard, court, forecourt or other appurtenance for occupation with, and for the purposes of, the dwelling-house itself (s. 61 (6)).

Attention should be drawn to five further points concerning the application of section 61.

4–09 It will be noted that whilst the land on which the single dwelling-house is built must be land owned by the owner at White Paper Day, it is not necessary that the owner should have planning permission at that date for the development of the land whether by the building of a house or anything else. In other words, while planning permission for the building of the house may be obtained after September 22, 1965, the land on which it is built cannot.

4–10 Secondly, it may be stressed that resort to section 61 for relief from levy may be had once and once only. In other words, the benefit of section 61 may be received in respect of one house only. Once this has been had the person who received the benefit can never receive it again (s. 61 (3) (*a*)).

4–11 Thirdly, the person for whom the house is being built must be the first person to occupy the house, and such person must continue to occupy the house for at least six months or (where he dies after having occupied it for less than six months) until his (or her) death (s. 61 (3) (*b*)).

4–12 Fourthly, if at one and the same time an owner seeks exemption under section 61 for two houses (whether standing on the same plot of land or on separate plots), then the Land Commission can give

a direction declaring which house shall, and which house shall not, receive exemption from levy (s. 61 (4)).

4–13 Fifthly, it may be mentioned that if an owner has claimed the benefit of this exemption in respect of a named adult member of his family, he may substitute the name of another adult member of his family at any time *before* the building of the dwelling-house is begun (s. 61 (2)). (As to when the building of the house may be said to have been begun, reference should be made to the discussion of section 64, *post*, at para. 5–17.)

8. Limited Exemption for Builders and Developers of Residential Property (s. 62)

4–14 Section 62 contains an exemption from levy which could be of the greatest use to a builder or developer of residential property. The section is, however, hedged about with a variety of conditions the whole of which need to be read most carefully.

4–15 In the first place the section only applies to a "builder or developer of residential property" and that means (s. 62 (7)) any person who *immediately before* September 23, 1965, was carrying on a business which:

(a) consisted wholly or mainly of the carrying out of building operations or of building and engineering operations and included the building of houses, flats or other buildings, *or*

(b) consisted wholly or mainly of building, or arranging for the building of, houses, flats or other dwellings and (in the capacity of owner of the fee simple or of holder of a tenancy of the land comprising the houses, flats or other dwellings) of selling or letting them.

Thus a builder or developer who had gone temporarily out of business before (even shortly before) September 23, 1965, but who later resumed operations after that date would *not* qualify for exemption because to get exemption he must have been carrying on his business *immediately before* September 23, 1965 (s. 62 (7)).

4–16 Secondly, section 62 relates to "the provision of housing accommodation." This expression means the building of one or more houses, flats or other dwellings, and includes the conversion of the whole or any part of a building into houses, flats or other dwellings (s. 62 (8)).

When then can a "builder and developer of residential property" carrying on business immediately before September 23, 1965, get exemption under section 62? For this the following three conditions must be satisfied.

4–17 The first condition requires that the builder must have owned, or been the lessee of, the land on which his development is to take place before September 23, 1965, *or* he must have been under an enforceable contract at that date to buy or take a lease of the land (s. 62 (1)).

4–18 The second condition requires that planning permission for the carrying out of some kind of material development (any kind will do, it need not necessarily be the kind of development which the builder is seeking to carry out) must have been *in force* before September 23, 1965 (s. 62 (3) (*a*)). This includes a planning permission granted *after* September 23, 1965, by the Minister on an appeal to him against a refusal (including a deemed refusal) of planning permission issued by a local planning authority *before* September 23, 1965 (s. 62 (3) (*b*)).

In this connection it may be important to remember that a planning permission is *in force* from the moment the appropriate resolution granting the permission is passed by the local planning authority, even though that decision is not notified to the applicant for planning permission until sometime later. This may be important in the case of a planning permission actually granted before September 23, 1965, but not notified by the local planning authority to the builder until after that date.

Some builders may now be looking back, if not in anger at least with anxiety, to see whether they can satisfy this particular condition, and it will be unfortunate and awfully bad luck for those who find that, having applied for planning permission well before September 23, 1965, they have later complied with a request from the local planning authority for an extension of time for the giving of a decision, which extension has had the effect of causing the planning permission to be granted at a date *later* than September 23, 1965, in which event the builder, through no fault of his own, cannot now claim the benefit of section 62.

It will be comforting to the builder to note that this second condition requiring that planning permission for the carrying out of some kind of material development shall be in force before September 23, 1965, includes an outline planning permission

(s. 62 (4)). It will be noted that section 62 (3) (*a*) speaks of "planning permission for *the carrying out* of material development"; it does not speak (as, for example, section 67 does) of planning permission *authorising* development. Thus an outline planning permission is enough to satisfy the condition here discussed, and nothing in section 99 (3)—by virtue of the proviso to that subsection—is to interfere with this arrangement.

4–19 Finally, the third condition requires that the project of material development which the builder is seeking to carry out must consist exclusively of "the provision of housing accommodation" (as discussed above) or, if it does not so consist, then it must be a project concerning which the Land Commission have to be satisfied on two things, namely:

(a) that the *principal* purpose of the development is the provision of housing accommodation, *and*

(b) that in so far as the project consists of the erection of buildings or works not comprised in the provision of housing accommodation (as, for example, the erection of shops, hotels, public-houses, theatres and other places of entertainment) the erection of such buildings is subsidiary to the principal purpose of the project and will be of benefit to persons occupying the housing accommodation (s. 62 (2)).

If all the foregoing provisions and conditions are satisfied, then a "builder or developer of residential property" can claim exemption from levy under section 62.

4–20 The claim is made by the builder serving upon the Land Commission a notice containing such particulars as are to be prescribed in The Betterment Levy (Notification) Regulations 1967 which will come into operation on April 6, 1967 (s. 62 (5)). The notice must be served by the builder within the prescribed period (which may not be less than six months) after April 6, 1967 (*ibid.*).

It will usually be a simple question of fact whether or not the foregoing provisions and conditions are satisfied. The only time when discretion comes into the matter is under section 62 (2) when the Land Commission have to be satisfied that development which is not of itself housing development is nevertheless being carried out in association with housing development and will be of benefit

to those occupying the housing development. There is no appeal against the Land Commission's decision on the point.

9. Concession to Builders Buying Land between August 1, 1966, and April 6, 1967

4–21 A word of warning may, perhaps, be added here to the effect that section 62 is a section which, in the limited circumstances in which it applies, confers *exemption* from levy.

This *exemption* under section 62 of the Act should not be confused with the provisions of Schedule 5, para. 11, to the Act which while they do not confer any exemption from levy in respect of development carried out by a builder or developer of residential property, do, nevertheless, give to him a concession which *may* have the effect of reducing the amount of the levy. It will be convenient to refer to the concession now.

The concession applies to a builder of residential property who buys land *after* August 1, 1966, and *before* April 6, 1967, for the purposes of carrying out upon that land development which constitutes the provision of housing accommodation (as defined in section 62 (8)) and which is begun within a period of six months after the first appointed day, that is to say, is begun not later than October 6, 1967.

If the builder does all this sort of thing he does not escape levy because, it will be remembered, he only acquired the land after August 1, 1966, whereas to escape levy he must (under section 62) have owned the land, or been under a firm contract to buy it, *before* September 23, 1965.

4–22 But if he cannot escape levy in these circumstances then, at least, by virtue of Schedule 5, para. 11, he can quote the price which he paid for the land when he bought it (*after* August 1, 1966, and *before* April 6, 1967) as the base value for the purpose of calculating the net development value of the land, that is, the value on which he will have to pay levy. As the builder will presumably have paid market value for the land, this means that his base value will be the amount of that market value, with the result that there will be nothing (or at least very little) on which he will have to pay levy. (Incidentally, it may be added that, as the sale and purchase of the land will have taken place *before* the first appointed day

April 6, 1967—when the Act comes into operation), the person who sold the land to the builder will not have to pay any levy.)

This concession has been made to builders in order to encourage them to go on buying land if they get the chance to do so. If they do buy land between August 1, 1966, and April 6, 1967, and use it for the provision of housing accommodation, remembering to commence development *before* October 6, 1967, then, as stated, they are entitled to quote the price they paid for the land as the base value for the purpose of calculating levy (Sched. 5, para. 11).

This is undoubtedly a concession because, in general the purchase price of land is *not* to be used as base value if the sale and purchase of the land took place at any time during the period between White Paper Day, September 23, 1965, and the first appointed day April 6, 1967 (see *post*, para. 6–14).

10. Exemption from Levy for Further Cases (s. 63)

4–23 Provision is made in the Act whereby, if the Minister so desires at any time hereafter, he may, by means of an order, exempt from levy any further case referred to in the Order (s. 63 (1)). Any such Order will need to receive an affirmative resolution of the House of Commons before it can come into force (s. 63 (2)).

It was mentioned earlier (see, *ante*, Chapter 3, para. 3–12) that the Act provides no *de minimis* provisions in connection with the notification of chargeable acts or events to the Land Commission. Such provisions could, however, be obtained hereafter by Ministerial Order made under section 63 of the Act if the Minister were ever disposed to make one.

Chapter 5

A TRANSITIONAL MATTER OF IMPORTANCE—DEVELOPMENT BEGUN BEFORE APRIL 6, 1967

1. Starting Development—Avoiding Section 27

5–01 To start or not to start? That is the developer's question as he surveys his land and the prospect before him—the ever-shortening period before the arrival of the first appointed day (April 6, 1967) under the Land Commission Act.

It may help to solve this question if, in the first place, one or two things were cleared out of the way by the setting down of a few simple statements.

If, for example, a person is now (February 1967) seeking to sell land and he does, in fact, sell it *before* April 6, 1967, that is to say, if the sale by him and the purchase by the purchaser is completed *before* April 6, 1967, no question of betterment levy arises on that transaction because the transaction fails utterly to be caught by Case A of section 27 of the Act.

Similarly if, during the diminishing days before April 6, 1967, a man grants a tenancy of his land and completes the transaction before April 6, 1967, there can be no question of levy on that transaction because, again, it fails utterly to be caught by Case B of section 27 of the Act.

Sales and purchases of land on the one hand, and the grant and receipt of tenancies of land on the other hand, are, however, matters susceptible of speedy negotiation, settlement and completion. There may be plenty of time before April 6, 1967, for a man wishing to sell land, or a man wishing to let land, to do so and complete the transaction *before* April 6, 1967, in which event he will be able to keep for himself the whole fruits of the transaction; no levy will be payable by him.

5–02 When, however, one turns to the matter of carrying out land development (or, to use the words of the Act, when one turns to "the carrying out of a project of material development") this is something which is not susceptible of commencement followed by

speedy completion in, say, a matter of days such as is a sale, or the grant of a tenancy, of land. Much, of course, depends upon the size of the project of development. Without doubt, if the project can be started and can be completed *before* April 6, 1967 (so that no development forming part of the project remains to be carried out *on or after* that date), then the whole of this project of material development will be free of levy because it fails utterly to be caught by Case C of section 27 of the Act, for Case C (let it be said again) applies only to the carrying out of a project of material development . . . " *begun on or after* the first appointed day "—see section 27 (2) of the Act.

Making a start on a project, however, is one thing; completing it is a different matter; and completing it before April 6, 1967, may be a very different matter indeed.

Nevertheless it is true to say that so far as section 27 of the Act is concerned (and this is the section which, under Case C, contains the taxing enactment which imposes levy on the carrying out of development)—so far as *that* section is concerned, once a start on development has been made before April 6, 1967, the section has no further relevance to the matter whatsoever because (to repeat what has already been said) Case C of section 27 applies only to development *begun on or after* the first appointed day.

Thus, once development has been begun *before* the first appointed day, then if the law had been left solely to section 27 (and its attendant provisions, namely, sections 31 and 32) the matter of levy would not arise—indeed, there would be no need to open the pages of the Land Commission Act at all.

2. Starting Development—Avoiding Section 67

5–03 However, the Land Commission Act, although perplexing, is not naive. On the contrary, it takes the deliberate precaution (so far as the carrying out of a project of material development is concerned) of *not* leaving the law where sections 27, 31 and 32 would have left it; the Act takes a further cold, keen look at all development which is begun *before* the first appointed day but which, for one reason or another, is completed *after* the first appointed day. This further cold, keen look by the Act is to be found in section 67, the meaning of which has been the subject of much disputation.

5–04 The first thing to realise about section 67 is that, contrary to what has sometimes been said about it, it is not a section which seeks to exempt from levy development begun before, but completed after, the first appointed day. That is not the object and purpose of section 67 at all. What has happened is that in section 67 the Act has added what may be called a rider to the simple provisions of section 27. In so doing the Act is motivated by the hope that if the Land Commission fail to catch a developer under section 27 (for the simple reason that the developer has taken the precaution of beginning his development *before* April 6, 1967) the Commission may nevertheless catch him under section 67 in respect of some, at least, of his development.

Thus, the object and purpose of section 67 is not to exempt anything at all from levy but is, conversely, to drag back into the Land Commission's net (and thereby render liable to levy) development which would otherwise have escaped that net altogether. This is the first point to appreciate about section 67.

5–05 There is, however, a second point to be mentioned about section 67 and the second point is something for which authority will not be found either in section 27 or in section 67. This further point is an inference to be drawn from the provisions generally of the Act. The inference is this.

If you have planning permission authorising the development of the whole of a project of material development, then, if you make a start on your project *before* April 6, 1967, but fail to complete the project before that date, you will nevertheless be wholly free of liability for levy.

Why is this? It is because, in the first place, you do *not get caught* by section 27 of the Act by reason of the the fact that you have begun your development before April 6, 1967, and it is because, in the second place, you do *not get caught* by section 67 because, having planning permission authorising the whole of your project of material development, you cannot possibly satisfy the requirements of section 67 (1) (*c*) which requires, before it can bite into your case at all, that there should be some part of your project (called in section 67 " the remainder ") on which you have *not* made a start and on which, furthermore, the carrying out of your project is *not* authorised by a planning permission *which itself authorises the carrying out of a " specified operation "* (*i.e.*, one of these operations defined in section 64 (3), the carrying out of which

makes it clear that you have begun your project). Clearly if you have planning permission authorising the development of the whole of your project you cannot satisfy the requirements of section 67 (1) (*c*) and, accordingly, section 67 (the dragging back clause) can have no application to your case.

5–06 To sum up it comes to this. If you have planning permission authorising the development of the whole of your project of material development and make a start upon it before April 6, 1967, you are free of levy on the whole project because

(a) section 27 cannot catch you (because you have begun), and

(b) section 67 cannot catch you either, because section 67 can relate only to a case in which your project of material development is begun on part of your land while on the other part of your land (in section 67 (1) called "the remainder of that land") your project is not authorised by any planning permission which of itself authorises the making of a start by the carrying out of a "specified operation."

3. Starting Development—Outline Planning Permission Only

5–07 In connection with the foregoing argument the point has been raised as to whether, in a case where you have planning permission covering the whole of your project of material development, but that planning permission is a planning permission in outline only—whether *that* is a sufficient planning permission to relieve you of levy. The answer is, No.

Outline planning permissions always contain conditions and the first condition usually says (in words of one sort or another) that "no development shall be carried out in pursuance of this permission unless and until detailed plans and specifications of the development have been first *approved* by the local planning authority."

This means, in effect, that notwithstanding the grant of planning permission a start on the site cannot be made *without breaching condition No.* 1 of the outline planning permission.

It must be remembered that the Town and Country Planning Act 1962 never speaks anywhere about "outline planning permissions" or "planning permissions in outline" but always about

" planning permissions." This matter of the outline planning permission is introduced by article 5 of the Town and Country Planning General Development Order 1963, an article which provides that (in order presumably to save expense) it is open for an applicant requiring planning permission to make an application which, if he so desires, may, under article 5 (2) of the Order, be " expressed to be an outline planning application."

If this is done the local planning authority, under article 5 (2) (i) of the General Development Order, may grant planning permission but if it does so, the authority must express that the permission is " granted under the provisions of article 5 (2) of the Order on an outline application and the *approval* of the authority shall be required with respect to the matters reserved in the permission before any development is commenced."

5–08 It will be noted that any such " outline planning permission " (as the popular phrase goes) does *grant permission.* This is not surprising; after all, the permission must be expected to do *something*; it is not to be regarded as a vain thing. What permission does it grant? The answer is that it grants permission for the project of material development referred to within it but goes on to say that further detailed particulars about that development shall first be *approved* by the local planning authority before any development is commenced. The project as such is authorised but the commencement of it is deferred. In other words, the project is authorised by the planning permission but the carrying out of a " specified operation " is not authorised until the further detailed plans have been approved.

If this is the case (and it is submitted that this *is* the case if your planning permission is an outline planning permission), then section 67 (1) (*c*) bites into you. This is because, even though you do begin your project before the first appointed day but fail to complete it before that day, the position when that day eventually arrives, will be that development will have been begun *on part* of the land comprised in your project but that *on the remainder* of such land you will not have begun your project and moreover (and this is the important bit) on that remainder, though you will admittedly have outline planning permission authorising *your project*, you will *not* have a planning permission which authorises *the carrying out of a " specified operation."* That being the position the requirements

of section 67 (1) (*c*) become fulfilled and the result is that section 67 as a whole *will* apply to your case.

5–09 If there was thought to be any doubt about this line of argument it is set at rest by the provisions of section 99 (3) of the Act which provide that wherever the Act speaks about development being " authorised " by planning permission, then if the only planning permission available is an outline planning permission, the only development which may be regarded as " authorised " within the meaning of the Act is either

(a) development which is authorised by the planning permission without need of any further approval of detailed plans, etc.; or

(b) development which has already received all such further approval as may be required for it by the terms of the planning permission.

5–10 Let us now consider the case of the man who in, say, January 1967 possesses planning permission in outline for a project of material development and who then, later on (but before April 6, 1967), fulfils the conditions of that outline planning permission by getting, from the local planning authority, detailed approval of plans, specifications, etc., relating to his project.

If, of course, such a man gets detailed approval under the conditions of the outline planning permission in respect of *all the development* covered by that planning permission, then the outline planning permission is, at one stroke as it were, converted into a full planning permission covering the whole of the development falling within the project. In such a case, and for the reasons already discussed, section 67 will not have any application to the case at all.

But the intriguing question is: What is to be the position of the man who in, say, January 1967, has outline planning permission for a project of material development and gets that outline permission built up before April 6, 1967, into a full planning permission *but in respect of part only of the development involved in his project?*

5–11 To quote a crude example, if a man has outline planning permission to develop an estate by building upon it 1,000 houses, and if later he submits for approval (which he gets) detailed plans, specifications, drawings etc., in respect of 400 of those houses,

what opportunity has that man of legitimately avoiding levy under the Land Commission Act?

The answer is that if he will take the precaution of carrying out a specified operation (as, for example, laying down the foundations of one single house) then provided that the house is one of the bunch of 400 houses in respect of which the outline planning permission has been built up into a full planning permission, and provided such specified operation is carried out before the first appointed day under the Act (April 6, 1967), then in such circumstances such a man is free of levy not only in respect of the 400 houses for which his outline planning permission has been built up into a full planning permission, but also in respect of the remaining 600 houses comprised in the outline planning permission but not, as yet, covered by any full planning permission.

5–12 This matter was the subject of illuminating discussion in the House of Lords when the Bill for the Land Commission Act came before the House in Committee on December 7, 1966. In the debate, Lord Kennet, for the Government, stated as follows (H.L., vol. 278, col. 1190):

> " Clause 67 (now section 67) provides, therefore, that a project under a planning permission can be taken to be started only where the specified operations which constitute the start are ' authorised ' by the permission. Clause (now section) 99 (3) has put beyond any doubt what ' authorised ' means, although in the Government's view there should not have been any real doubt even before that subsection was inserted on Report in the House of Commons. ' Authorised ' means that any detailed approvals necessary under the permission before the specified operations can be carried out have been obtained. . . . "

Lord Kennet continued:

> " An illustration may help to illuminate this clause (now section 67). . . . Imagine a builder with fifty-five acres of land. He has an outline permission for thirty acres and detailed approvals of ten of them. If he starts work by laying out roads, or digging foundations on the ten acres in accordance with the detailed approval the project started will be the development of the thirty acres. The development of the

remaining twenty-five acres will be a separate project started after the appointed day."

The authority for Lord Kennet's statement is section 67 (2) (*a*). It will be noticed that in paragraph (*a*) of that subsection there is a reference to " land comprised in that planning permission " and the argument goes as follows.

5–13 If the carrying out of a specified operation which marks the beginning of development is *authorised* by a planning permission, then the effect of the carrying out of the specified operation, if it takes place before the first appointed day under the Act is to relieve from liability to levy all development upon land *comprised* in that planning permission. (The use of the word " comprised " in contradistinction to " authorised " in section 67 (2) (*a*) is to be noted.) Thus in a case where a developer has outline planning permission for the whole of his project of material development, then

(1) provided that some part of that outline permission has been built up into a full planning permission by obtaining the requisite detailed approvals and consents required by the outline planning permission, *and*

(2) provided that the start of the development has taken place before April 6, 1967 on land comprised in that part of the outline planning permission which has been built up into a full planning permission,

then in such a case the developer will be free of levy in respect of all development comprised in the outline planning permission (s. 67 (2) (*a*)).

5–14 It is important for the developer who seeks to get the freedom from levy illustrated in the example quoted by Lord Kennet (see above) to make sure that he applies (under the aegis of the outline planning permission which he already holds) for the *approval* of the local planning authority to detailed plans submitted for such approval under, and in accordance with, conditions set out in the outline planning permission granted earlier. Such a developer must be on his guard against submitting his detailed plans in the form of an application for (full) planning permission. If he does this and gets the application granted as a second (and full) planning permission he will be free of levy only in respect of development included in that second planning permission and not in respect

of all the other development comprised in the outline planning permission granted earlier.

5–15 The foregoing is a strict reading of the law as set out in section 67 (2) (*a*) of the Act. However, Lord Kennet (speaking for the Government) may be quoted again when he said in the House of Lords on January 19, 1967 (H.L. Vol. 297, col. 292):

> "The doubt expressed by the noble Earl (Lord Kinnoul) relates to the case where an outline planning permission has been given—a permission which is subject to conditions and which does not in itself authorise the start of development.
>
> Does this permission exist in its own right, or has it in some way to be built up by a planning *permission* * which authorises development to be begun? The answer is that it does not. Such a planning permission is in existence, and no further planning permission is needed. Application for detailed consent does not involve an application for planning permission. I know the Law Society has in mind that even if some authorities require application for consents to be made on the usual planning permission application form, the fact is that the type of application form used does not of itself determine that this is an application for planning permission. So long as the applicant knows what he wants he is safe, and should not be disadvantaged by any procedural requirements of the authority."

4. Limited Avoidance of Levy—Bare Outline Planning Permission

5–16 The point may be taken that under a bare outline planning permission for a project of material development (that is to say, a planning permission which does not *of itself* authorise the carrying out of development, and no part of which has been built up (as above described) into a full planning permission), there could be no question of making a start on the development for the reason that it would not be in order for the developer to make any such start until certain conditions specified in the grant of permission had

* The author's italics.

been fulfilled. But to say this is to miss the point that it is not an offence to begin development without planning permission. It is an offence to go on with development after having been served with an enforcement notice which has later come into full force and effect and which prohibits the continuance of the development. But local planning authorities do not always serve enforcement notices in respect of development begun without planning permission. On the contrary, they frequently grant planning permission *ex post facto* and are expressly authorised by statute (the Town and Country Planning Act 1962, s. 20) so to do.

But this is all "town planning-wise." On the other hand, "Land Commission-wise," the great thing is to make a start. Once a start is made then, as has been stated, section 27 goes out of the window and all liability for levy goes with it, unless that liability is resurrected by virtue of the provisions of section 67 in a case in which section 67 gets an opportunity to function.

If, however, you have made a start having only a bare outline planning permission (or, indeed, having no planning permission at all), it certainly must be remembered that you will be free of levy only in respect of development on the very land *on which* you have actually made a start by carrying out a "specified operation"—section 67 (3) (*a*) of the Act.

5. What is Making a Start?—The Specified Operations

5-17 Whether or not you have made a start on your development is a question of fact and it depends on whether or not you have carried out in connection with your development something which is called in the Act "a specified operation." Only if one or other of five different kinds of specified operations have been begun, can it be said that a project of material development has been begun. The five specified operations are set out in section 64 (3) of the Act in the following terms:

> "(3) In this Part of this Act 'specified operation' means any of the following, that is to say:
>
> (a) any work of construction in the course of the erection of a building;
>
> (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building;
>
> (c) the laying of any underground main or pipe to the foundations, or part of the foundations, of a building

or to any such trench as is mentioned in the last preceding paragraph;

(d) any operation in the course of laying out or constructing a road or part of a road;

(e) any change in the use of any land, where that change constitutes material development."

It will be noted that the clearing of land by the demolition of obstructive buildings, trees or other matters is not a specified operation and does not constitute the beginning of development. In short, demolition is not enough.

The carrying out of any one of the foregoing specified operations can itself raise questions. For example, if the particular specified operation which one has in mind is the one set out in section 64 (3) (*b*), namely, the digging of a trench which is to contain the foundations of a building, when, it may be asked, may the project of material development to which this trench digging operation relates be said to have been begun? The answer is that the project must be taken to have been begun on the earliest date on which the digging of the trench in question began to be carried out. This is the decisive (and helpful) effect of the provisions contained in section 64 (4) of the Act.

6. Position under Section 67 Summarised

5–18 Without doubt section 67 of the Act is not the easiest of things to follow, but the effect of the section may be summarised in the following way.

A developer, let us assume, has conceived a "project of material development" which means (ss. 64 and 65) what in common parlance may be called the Developer's Whole, Entire, Comprehensive Scheme of Development. He has planning permission *authorising* the carrying out of part of the scheme but not the remainder of the scheme. A start is made by, say, digging a foundation trench before April 6, 1967, on part of the scheme. The position then is as follows.

5–19 If the digging of the foundation trench before April 6, 1967, is on land where development is authorised by the planning permission then

(1) the whole of that part of the developer's scheme comprised in the planning permission,

(2) *together with* any other part of the scheme (even though not authorised by any planning permission) which stands on land on which a specified operation is carried out—

all this development is to be regarded as a separate entity carved out (as it were) from the Developer's Whole, Entire, Comprehensive Scheme and begun before April 6, 1967 (s. 67 (2) (*a*)) with the result that all such development is free of levy (s. 27 (2), Case C).

Conversely, all the remainder of the Developer's Whole, Entire, Comprehensive Scheme is to be regarded as a totally separate entity and is to be taken as *not* having been begun before April 6, 1967 (s. 67 (2) (*b*)) and in consequence is to be liable to levy (s. 67 (5)).

5–20 Again, if the digging of the aforementioned foundation trench is begun before April 6, 1967, but this time is begun on land where such digging is not authorised by any planning permission then that particular part of the developer's scheme of development which stands on land on which the trench is dug is to be regarded as a separate entity carved out from the Developer's Whole, Entire, Comprehensive Scheme of Development and begun before April 6, 1967 (s. 67 (3) (*a*)), with the result that all such development (*i.e.*, such development as stands on land on which the trench is dug) is free of levy (s. 27 (2), Case C).

Conversely (and as before), all the remainder of the Developer's Whole, Entire, Comprehensive Scheme of Development is to be regarded as a totally separate entity and is to be taken as *not* having been begun before April 6, 1967 (s. 67 (3) (*b*)), and in consequence is to be liable to levy (s. 67 (5)).

7. Variation of Project of Material Development

5–21 In any consideration of the effect of section 67 of the Act it will be remembered that section 64 defines a "project of material development" and provides a method of determining clearly at what date a project is taken to begin, while section 65 of the Act provides a method of determining what development and operations and which land are taken to be comprised in any particular project of material development.

A project of material development once begun may, however, be varied as it goes along. It is to be emphasised that any variation

of a project may lead the developer into a liability for levy which he would otherwise have escaped under section 27 (and in spite of section 67) on the grounds discussed earlier in this chapter.

Variation of a project of material development is dealt with in section 66 of the Act which caters for two particular matters.

If the variation constitutes additional development which is to be carried out *on other land*, the extension is considered to be a separate project of material development and is to be dealt with accordingly (s. 66 (1) (2)).

If the variation constitutes additional development *of the same land* as that to which the original project applied, then, if the variation is regarded as substantial (and the Lands Tribunal can be brought in to pronounce on this), levy may be assessed as though a separate project of material development had been begun (s. 66 (3) (4) (5)).

CHAPTER 6

THE REALISATION OF DEVELOPMENT VALUE AND ITS CALCULATION

1. Levy Bites only Development Value

6–01 BETTERMENT levy is payable to the Land Commission whenever the development value in land, or *any part* of the development value in land, is realised after April 6, 1967 (s. 27 (1)).

To put the matter another way it may be said that levy arises:

(1) on the *realisation of an increase* in the development value of land, or

(2) on the *realisation of compensation for a decrease* in the development value of land.

Any increase in the *current use value* of land does not attract levy. It is only when there is a rise in the *development value* of land that levy comes into the picture at all.

The Act sets out six Cases in which, under the foregoing basic propositions, it may be said that development value *is* realised by some person or persons who thereupon become liable to pay levy at the rate for the time being in operation.

The rate of levy will be fixed by regulations (s. 28), but it has been authoritatively stated (White Paper "The Land Commission," Cmnd. 2771, para. 30) that, to begin with, the levy will be at the rate of 40 per cent., rising progressively to 45 per cent. and then to 50 per cent. at reasonably short intervals.

2. The Six Chargeable Acts or Events—Cases A to F

6–02 The six instances which the Act declares to be cases in which liability to levy arises are known as the Six Chargeable Acts or Events (s. 27 (3)). They are as follows:

CASE A (ss. 27, 29 and 37)

6–03 This case arises whenever (s. 29) there is a disposition of land on or after April 6, 1967:

(1) by conveyance on sale of a freehold; *or*

(2) by assignment on sale of a tenancy granted, renewed or extended, for *not less* than seven years; *or*

(3) by assignment on sale of a tenancy of *less* than seven years *if* the assignment is notified to the Land Commission by the grantee.

Any exchange of land is to be regarded as two separate dispositions (s. 79).

CASE B (ss. 27, 30 and 37)

6–04 This case arises whenever (s. 30) there is a disposition of land on or after April 6, 1967:

(1) by the grant of a tenancy for *not less* than seven years; or

(2) by the grant of a tenancy for *less* than seven years *if* the grant is notified to the Land Commission by the grantee.

CASE C (ss. 27, 31, 38 and 39)

6–05 This case arises whenever (s. 31) a project of material development is begun on or after April 6, 1967.

CASE D (ss. 27, 33 and 40)

6–06 This case arises whenever (s. 33) compensation accrues, on or after April 6, 1967, in respect of:

(1) the revocation or modification of a planning permission; *or*

(2) the refusal of planning permission or its grant subject to conditions; *or*

(3) the interference with authorised development by an order made under the Town and Country Planning Act 1962.

CASE E (ss. 27, 34 and 41)

6–07 This case arises whenever (s. 34) there is a disposition made for value, on or after April 6, 1967 (being a disposition which does *not* fall under Case A or Case B above) and which is a disposition:

(1) granting an easement; *or*

(2) releasing or modifying an easement or restrictive covenant

and which is, in either case, notified to the Land Commission by the grantee.

CASE F (ss. 27, 35 and 42)

6–08 This case applies (s. 35) to the occurrence, on or after April 6, 1967, of such other acts or events as are designated as chargeable

acts or events under regulations to be made by the Minister. The Minister is making the Betterment Levy (Case F) Regulations 1967 which will come into operation on April 6, 1967.

Each of the foregoing Cases A, B, C, D, E and F is examined in more detail in subsequent chapters, namely, Chapters 7 to 12 respectively.

3. Calculating a Rise in Development Value

6–09 Whichever Case, however, is being investigated it will be remembered that levy can bite only into an increase in *the development value* of land and not into any other value. The result is that whichever case is under investigation it will be necessary in every instance to ascertain whether, as a result of the occurrence of a chargeable act or event, there has been *a rise in the development value* of land.

No levy can be calculated until there has been first a calculation of the rise, if any, in the development value of land occasioned by the occurrence of a chargeable act or event.

The calculation of development value in any of the foregoing six Cases will be largely a matter of valuation. Whilst it will never be easy it will certainly be more difficult in some of the six Cases than in others.

In this chapter there is later set out three equations with which the reader may think fit to familiarise himself. If he can do this, these equations will give him helpful basic knowledge with which to approach the more detailed provisions of the Act itself and, particularly, of those Schedules to the Act, namely, Schedules 4 to 13 inclusive, relating to development value, its calculation and the impingement of levy in the instances arising under each of the six Cases.

4. The Process in a Nutshell—Market Value and Base Value

6–10 In a nutshell, the whole complicated process works like this. In the search for the development value of land three values relating to land have to be borne in mind.

At the top of the scale of values there is the *market value* of land—the price it would fetch in the open market in the world of

town planning control in which we all now live; the price it would fetch with all the possibilities (if any) of future development attached to it. If the land is a field then its market value is the value of that land with all such prospects (if any) of future development (as, for example, for housing purposes or industrial purposes or commercial purposes) attached to it.

At the bottom of the scale of values there is the value of the land for its current use—its *current use value*. If the land is (as before) a field, then its current use value is its value for use as a field.

In the case of the field here mentioned its current use value as a field may be £300 per acre. But its market value (if it happens to be in an area zoned in a development plan for commercial development) might be £3,000 per acre in which event its *development potential* would produce a development value of £2,700 per acre.

In the continuing search for the development value of land another term—another value—has now to be learnt. This is called *base value*.

Base value of land stands at the bottom end of a gap at the top end of which stands market value. The difference between these two values or, in other words, the whole of the value which fills up the aforesaid gap, is called the development value of the land.

For the purpose of calculating the development value of land, the base value may sometimes be derived from the current use value of the land (Sched. 4, paras. 5, 15, 33 and 38).

Alternatively, base value may sometimes be taken as the price at which the land was last sold and bought (Sched. 5, Part I).

6–11 If a levy payer has a choice (and he does not always have a choice—as is explained later) he is *entitled* to choose the value which most narrows the gap between base value (at the bottom) and market value (at the top) and thereby cuts down the size of the development value of the land (Sched. 5, para. 7). As levy can only bite into development value it follows that the narrower the aforesaid gap can be made the smaller will be the amount of the development value and, consequently the smaller will be the amount of any levy which is payable under the Act.

At this point it will be helpful to quote the words of the Minister of Land and Natural Resources when he said at the Second

Reading of the First Bill for the Act (*Hansard*, Vol. 723, col. 709):

> *"I have used the expression 'base value.' This, in fact, can be the greater of two alternatives. The first takes the value of the land for its current use, that is, the value as it is now without any prospect of a more profitable development, and adds a further 10 per cent. The second alternative is simply to take the price which the vendor previously paid for the land which he is selling for development. . . .*
>
> *"The factors for establishing the components of the calculation on which the levy is assessed are set out in Schedules 4 to 8* [now Schedules 4 to 13 to the Act]. *In essence, they lay down the guide lines for the valuers who will have to find the amount of development value and the Lands Tribunal which will determine it if there is a dispute about it."*

5. The Equations—The Basic Equation

6–12 Eschewing detail and speaking generally, the whole procedure for ascertaining the development value of land, in order thereby to calculate (at the current rate) the amount of levy payable in any given case—the whole procedure may be summed up in three separate equations which are now set down as follows:

The Basic Equation

$$\mathbf{NDV = MV - BV - EIAR}$$

Spelling the matter out at length, this means that Net Development Value equals Market Value minus Base Value minus Expenditure on Improvements or Ancillary Rights. These latter matters are dealt with in detail in Schedule 4, Part V, to the Act.

The foregoing is the basic equation and its solution will give the amount of that net development value of land on which levy will bite.

But if the foregoing is the basic equation it is followed by two subsidiary equations. These two subsidiary equations are alternative methods for calculating BV, *i.e.*, base value. Let it be repeated

that the levy payer, if he has a choice of either of these two equations—and he does not always have a choice—but if he *does* have a choice then he may choose that particular subsidiary equation which gives him the highest base value.

It will be appreciated that the higher base value is fixed, the nearer it will come to market value and, accordingly, the smaller will be the net development value on which levy will bite.

6. The Two Subsidiary Equations

6–13 The two Subsidiary Equations are as follows:

The First Subsidiary Equation

BV = 11/10ths of CUV + SD

Again, spelling the matter out at length, this means that Base Value equals 11/10ths of Current Use Value plus an amount for Severance Depreciation (*i.e.*, damage to other land).

The Alternative Subsidiary Equation

BV = CFLRD

Once more, spelling the matter out at length, this means that Base Value equals the Consideration (purchase price) For the Last Relevant Disposition.

The levy payer having worked out both of the two subsidiary equations can, as stated (and if he has a choice at all), choose the result which gives him the higher Base Value.

7. The "Close Season" for Base Values

6–14 It is to be emphasised, however, that not every levy payer can avail himself of the second of the two subsidiary equations. The second of the two subsidiary equations is one which allows base value to be taken as the consideration for the last relevant disposition or, in other words, the price which was paid when the land in question was last sold.

But this second subsidiary equation can only be used if the previous disposition to which it is sought to have recourse occurred *between* July 1, 1948 (when the Town and Country Planning Act 1947 came into force) and September 22, 1965 (White Paper Day for the Land Commission Bill), both dates inclusive, or if it occurs *after* April 6, 1967 (when the Land Commission Act 1967 comes into force) (Sched. 5, paras. 2 and 3).

There is, thus, a blank period which stretches between September 23, 1965, and April 6, 1967, inclusive, during which recourse may not be had to a previous disposition in order that the purchase price on that occasion may be used as a base value. This blank period may be called the " close season " for base values!

6–15 There are three important exceptions to this general statement. In the first place a previous disposition occurring during this close season may, nevertheless, be used as a base value if the disposition was made in pursuance of an enforceable contract made *before* September 23, 1965, provided, however, that such contract was not a contract granting an option which was not exercised before September 23, 1965 (Sched. 5, para. 2 (2)).

6–16 In the second place a previous disposition occurring during the close season for base values may nevertheless qualify as a base value if the disposition was one made by (Sched. 5, para. 10):

(1) a local authority or one of the other public bodies mentioned in section 56 of the Act;

(2) a charity in respect of land exempted from liability to levy under section 57 of the Act;

(3) a statutory undertaker or the National Coal Board in respect of land exempted from liability to levy under section 58 of the Act; *or*

(4) the Crown or the Duchy of Cornwall.

6–17 The third exception to the general rule that the period between September 23, 1965, and April 6, 1967, inclusive, is a close season for base values affects anyone who is " a builder or developer of residential property " who purchases land *on or after* August 1, 1966, and *before* April 6, 1967, and who carries out his residential development before the end of six months from April 6, 1967, that is to say, before October 6, 1967 (Sched. 5, para. 11).

The reason for this close season for base values between September 22, 1965, and April 6, 1967, is because of the fear of collusive sales and purchases taking place during this period with

the object of artificially elevating the base value of land for the purposes of the calculation of levy.

8. No Shifting of Liability for Levy

6–18 Any person liable for levy on the occurrence of a chargeable act or event under Cases A to F, respectively, cannot shift his responsibility on to some other person by means of any contractual arrangement because any such arrangement will be void if contained in a contract made *on or after* December 29, 1965, the date of the publication of the first Bill for the Act (s. 83 (1) (2) (*c*)). There is, thus, no possibility of taking an *indemnity for levy* except in a case where a contract for so doing was signed *before* December 29, 1965.

9. Capital Gains Tax and Levy

6–19 It has been said over and over again, on behalf of the Government, that no person is to be mulcted in levy twice over and this has led to a consideration of what is to be the relationship between betterment levy under the Land Commission Act 1967 and Capital Gains Tax or Corporation Tax under Finance Acts.

On this the White Paper on the Land Commission (Cmnd. 2771) said, in paragraph 30,

> *" Development value will be excluded from Capital Gains for the purposes of Capital Gains Tax on long term gains or Corporation Tax. This will mean that, from the time that the levy comes into operation, it will be the main instrument for dealing with development value."*

In Standing Committee E dealing with the Land Commission Bill the Minister of Land and Natural Resources said (at col. 527) that he had been asked by an honourable member:

> *" to give an assurance that the development value will be excluded from Capital Gains for the purpose of Capital Gains or Corporation Tax. I can give him that assurance. The Finance Bill for 1967 will provide that after the appointed day (which, it is now known, is to be April 6, 1967), Capital Gains for these purposes will be limited to gains from the current use*

value of the land. We shall be making provision for transitional arrangements in the [Land Commission] Bill."

This promised provision is now to be found in sections 69, 70 and 71 as read with a very complicated schedule, namely, Schedule 8 to the Act entitled "Deductions from levy in respect of Capital Gains Tax and Corporation Tax."

6–20 When an assessment is made for levy an *appropriate deduction* is to be made from the amount of levy chargeable on the first chargeable act or event duly notified to the Land Commission after April 6, 1967 in certain circumstances where an overlap may otherwise occur (ss. 69, 70, 71, and Sched. 8).

It will be remembered that whereas Capital Gains Tax applies, in the normal case, only to increases in value which have occurred since April 5, 1965, levy under the Land Commission Act will apply to any increase in the value of land over and above its current use value, *however long that increase in value has been growing*. The Land Commission may go back over an indefinite period of time to find a base value for their levy calculations. Thus a developer now developing land which he has owned since the turn of the century in 1900 will find that the development value of that land is today very high indeed and levy (under Case C) will likewise be high.

6–21 The one exception to the general rule that levy will impinge on development value, however long that development value has been growing, is where the land has been sold at some time between July 1, 1948, and September 22, 1965 (both dates inclusive), or where it is sold after April 6, 1967, in either of which instances the purchase price for the land may be taken as the base value *if the levy payer so desires*. It is for him to say.

10. Estate Duty and Levy

6–22 Similarly there has been some fear that there might be an overlap between liability for levy and liability for Estate Duty. On this it was said in Standing Committee E (col. 948) by Mr. Graham Page:

"At any rate it seems wrong that both Estate Duty and betterment levy should be levied on the same man. The purpose of the Amendment is to take the Estate Duty into account

against the value of the land, against the net development or against the payment of levy, whichever mathematical way one wants to do it, but in some way to relieve the estate from paying both duty and levy."

To this the Minister of Land and Natural Resources replied (*ibid.*):

"*It is agreed, as I think I mentioned before, that some such provision is needed. . . . I emphasise again that we recognise the need to provide that allowance should be made for Estate Duty when levy is assessed on a subsequent event. We will table an amendment on report to meet this situation, to provide that the amount of Estate Duty payable in respect of development value will be set off as a reduction from net development value.*"

This promise finds fulfilment in sections 69, 70 and 71 as read with Schedule 7 to the Act entitled "Allowance in respect of Estate Duty."

6–23 When an assessment is made for levy an *appropriate allowance* is to be made, as a deduction from market value, consideration or compensation (as the case may be), for Estate Duty which overlaps with levy (ss. 69, 70, 71 and Sched. 7). The amount of Estate Duty allowed by way of deduction is *not* a deduction against the amount of levy which is payable; on the contrary, it is a deduction against the assessed value on which the levy is calculated.

11. Special Provisions about Levy in Certain Cases—Groups of Companies, Connected Persons and Beneficiaries

6–24 By the provisions of Schedule 13, entitled "Special provisions as to levy in certain cases," dispositions taking place between companies which are members of a group of companies are exempt from levy (s. 78, Sched. 13, Part I, "Groups of Companies").

If there has been a capital distribution from a company to persons connected with that company and levy remains unpaid, then it can be recovered from such persons (s. 78, Sched. 13, Part II, "Connected Persons"). Moreover, if there has been a transaction between "Connected Persons" and levy has not been paid, then the purchaser in such transaction cannot claim the price he

paid as base value on the occurrence of a subsequent chargeable act or event leading to liability for levy (*ibid.*).

In a case where the person primarily liable to levy is a bare trustee the levy may be recovered by the Land Commission direct from the beneficiary (s. 78, Sched. 13, Part III, "Beneficiary Absolutely Entitled").

12. Levy and Minerals

6–25 Betterment levy will apply to the working of minerals, to the disposition of land which comprises, in whole or in part, minerals and to compensation paid because of a prohibition against the working of minerals (s. 74).

The impingement of levy will, in these instances, be subject to exceptions and modifications to be specified in regulations (s. 74 (1)) which will need to receive approval by the House of Commons before they can come into operation (s. 74 (2)). The Minister is making the Betterment Levy (Minerals) Regulations 1967.

If an owner of land had a *right*, on September 22, 1965—White Paper Day—to work the minerals lying within the land, then he may well find, hereafter, when he does in fact get around to working the minerals, that he does not have to pay levy. The aforementioned regulations will, when made, pronounce categorically on this.

13. Credit for Levy Carried Forward

6–26 In certain circumstances an assessment of levy under Case A (in a case where land is acquired by an authority possessing compulsory purchase powers) or under Case C, D or E may result in no immediate liability for levy but establish a credit which is carried forward and taken into account in a subsequent assessment of levy on the same owner in respect of the same land (s. 76, Sched. 11).

Chapter 7

LEVY IN CASE A

1. When it Arises

7–01 The chargeable act or event which causes levy to arise under Case A is where land is disposed of (ss. 27 and 29) on or after April 6, 1967 by way of:

(1) a conveyance on sale of a freehold; *or*

(2) an assignment on sale of a tenancy for *not less* than seven years; *or*

(3) an assignment on sale of a tenancy for *less* than seven years *if the assignment is notified to the Land Commission by the grantee* (s. 29 (1)).

An exchange of land is regarded as two separate dispositions (s. 79). The surrender of a tenancy to a landlord, if made for value, is regarded as an assignment on sale (s. 85 (3) (*a*)).

A disposition of land by inheritance or gift is not a chargeable act or event leading to liability to levy; but if such a disposition were followed by the development of the land, then the development value realised on such development would be liable to levy under Case C (see *post*, Chap. 9).

7–02 The effective date of a disposition for the purposes of Case A is the date when the conveyance or the assignment of the land is actually *executed* and not the date of the contract for sale (s. 85 (4)). Thus time is of the essence of the contract under Case A and any contract for sale of land entered into before April 6, 1967, should make this entirely clear.

For instance if, in such a case, one is acting for the vendor (the transferor), one may well seek to have the date for completion of the sale and purchase some date *before* April 6, 1967, in which event the whole of the purchase money will be retained by the vendor and will not be liable to levy.

Conversely, the transferee in this case will not, in the normal course of things, on the subsequent occurrence of a chargeable act or event while the land is in his possession, be able to claim as a

base value the amount of the purchase money paid by him to the transferor (see *ante*, Chap. 6, paras. 6–14, 15, 16 and 17).

On the other hand if, in the foregoing instance, one is acting for the purchaser of the land or the assignee of the tenancy (the transferee), one may seek to get the date for completion at some time *on or after* April 6, 1967, in which event the purchase money paid to the vendor (the transferor) will be liable, in the hands of the transferor, to levy under Case A and the amount of such purchase money can be used by the purchaser or assignee (the transferee) as a base value for the purpose of calculating levy in the event of any subsequent chargeable act or event occurring while the land is in the possession of the transferee.

7–03 It will be appreciated that this conflict between the interests of the transferor and of the transferee will come to an end on the coming into force of the Land Commission Act on April 6, 1967. In the meantime the date for completion of the sale of land must be carefully watched and, in this context, it will be remembered that it is now too late to shift, by special provisions inserted in the contract, any liability under the Act for levy; this could be done only under a contract made *before* December 29, 1965 (s. 83 (1) (2) (*c*)).

7–04 Because the Act, in the normal course of events, precludes the purchase price of land acquired during the period between White Paper Day (September 22, 1965) and the First Appointed Day (April 6, 1967) being used as a base value for calculating levy—the foregoing period being the " close season " for base values (see *ante*, Chap. 6, para. 6–14)—it follows that any person acquiring land during this " close season " should, if he wants to avoid levy, either sell the land *before* April 6, 1967, or begin development of it *before* April 6, 1967. (As to when development may be said to be begun, see *ante*, Chap. 5, para. 5–17).

If such a person does not do one or other of these things he may find himself having, in effect, to pay levy twice over. He will find himself paying full market value to the vendor and then, notwithstanding this, having to pay levy (under Case A) when he sells the land or (under Case C) when he begins to develop the land, if either of these things are done *on or after* April 6, 1967.

Case A is one of the more important of the Six Chargeable Acts or Events and, it is thought, will be the one most frequently to arise after the Act comes into operation on April 6, 1967.

7–05 Put simply, Case A comprises the sale of land from Y to Z. Y receives purchase money at market value rate from Z and on this purchase money Y is liable to levy. If Z has bought the land at market value rate with a view of developing it he will be liable under Case C (see *post*, Chap. 9) when he begins his development *only if there has been some further rise in the development value of the land since the purchase of the land by him from Y*. Thus if, having purchased the land, Z at once gets on with his development it is unlikely that there will have been any further rise (except perhaps marginally) in the development value of the land and, accordingly, though Z on developing the land will be technically liable (under Case C) to levy, it will probably be the case that the amount of levy payable is small or even nothing at all. Indeed, Z may even get two years' grace from liability to levy under Case C if he applies for exemption to the Land Commission under section 60 (see *ante*, Chap. 4, para. 4–06).

2. Notification of Case A to the Land Commission

7–06 When a chargeable act or event under Case A occurs (see *ante*, para. 7–01) purchase money will pass from the purchaser to the vendor, *i.e.*, from the grantee to the grantor.

In this event it is *the duty of the grantee*, on a sale of land or on an assignment of a tenancy for seven or more years, to notify the matter to the Land Commission (s. 37 (1)) within *thirty days* of the disposition occurring or within such extended period as the Commission may allow (s. 37 (4)).

If the disposition is a tenancy for less than seven years then notification by the grantee is optional. If the grantee feels there is any likelihood of a further chargeable act or event occurring during his brief holding of the land he would be wise to notify the Commission, thereby establishing for himself an alternative base value (under Schedule 5 to the Act) for the purpose of calculating levy in respect of that further chargeable act or event.

The Betterment Levy (Notification) Regulations 1967 which come into operation on April 6, 1967, prescribe the particulars and manner of notifying an instance of Case A to the Land Commission.

3. Penalty for Non-Notification

7–07 If the grantee fails to notify the Land Commission in due time in a case where notification by him is obligatory, he is guilty of an offence and is liable on summary conviction to a fine of £50 (s. 81 (1)). No proceedings for this offence can be brought except with the consent of the Land Commission or by, or with the consent of, the Director of Public Prosecutions (s. 82 (1) (2)). The Commission may mitigate any penalty or stay or compound any proceedings (s. 82 (4)).

Where an offence is committed by a body corporate, any director, manager, secretary or other similar officer of the body corporate may be held guilty of the offence if the offence by the body corporate is attributable to the consent, connivance or neglect of any such person (s. 97).

4. How to Calculate the Amount of the Levy

7–08 Levy impinges (see *ante*, Chap. 6, para. 6–01) only on the development value in land (s. 29 (2)). Therefore the first thing to ascertain in calculating levy under Case A is the development value in the land which has been sold.

7–09 NET DEVELOPMENT VALUE is represented by the Basic Equation:

$$\mathbf{NDV = MV - BV - EIAR}$$

This means:

> *Net Development Value equals Market Value less Base Value less Expenditure on Improvements or Ancillary Rights* (s. 29 (3), (4)).

7–10 MARKET VALUE (s. 29 (3) and Sched. 4, Parts I and V, and Sched. 6) is the purchase price received by the vendor. In noting this price, however, it is necessary to taken into account the supplementary provisions of Schedule 6 to the Act to ensure that every single form of consideration apart from money (*e.g.*, the release of a debt; the value of any property to be given in exchange) is taken into account.

7–11 BASE VALUE is ascertained as a result of the working out of Two Subsidiary Equations. The levy payer may sometimes (but not always) take the equation which gives him the higher base

value thereby reducing the amount of levy payable by him (see ante, Chap. 6, para. 6–01).

7–12 The First Subsidiary Equation is:

$$\mathbf{BV} = \frac{\mathbf{11}}{\mathbf{10}} \mathbf{CUV} + \mathbf{SD}$$

This means:

Base Value equals 110 per cent. of current use value plus Severance Depreciation (s. 29 (3) and Sched. 4, Parts I and V, and Sched. 6).

7–13 CURRENT USE VALUE is the value of the land immediately after the disposition calculated in accordance with Schedule 6 to the Act on the assumption that planning permission:

(a) *would be granted* for any development of the land provided it is not " material development " (as to which see *ante*, Chap. 2, para. 2–04), but

(b) *would not be granted* for any development which amounts to " material development " (s. 29 (3) and Sched. 4, Part I, para. 3, and Sched. 6).

In the First Subsidiary Equation 110 per cent. (rather than 100 per cent.) of current use value is permitted under the Act in order that it may function as an incentive to redevelopment. This 10 per cent. addition to current use value has been referred to as a device the object of which is to help to bridge the gap between the current use value of land and the redevelopment value of land in built-up areas where, it is suggested, the current use value is nearly up to the redevelopment value of the land. There is not the same attraction in redeveloping such already-developed land as there is in developing wholly-undeveloped land. Therefore, to provide an incentive to redevelop land already built-up, the base value for calculating levy is to be current use value plus 10 per cent. This will leave more money in the hands of an owner who sells a large, unmanageable house for redevelopment, say, as two convenient small houses. It will, however, have little effect on the amount of levy payable when unbuilt land is sold for the first time for development.

7–14 SEVERANCE DEPRECIATION relates to the amount (if any) by which *the value of other land*, held with the land which is being

sold, is depreciated as a result of such sale (s. 29 (3) and Sched. 4, Part I, para. 4, and Sched. 6).

With amounts for the foregoing terms, namely, "current use value" and "severance depreciation," calculated as above explained, it will be possible next to work out the effect of the First Subsidiary Equation for ascertaining base value, that is to say, the equation set out above in the form:

$$\mathbf{BV} = \frac{\mathbf{11}}{\mathbf{10}} \mathbf{CUV} + \mathbf{SD}$$

After base value has been ascertained by means of the First Subsidiary Equation it will be necessary to work out the Second Subsidiary Equation *in a case where resort to that equation is permissible under the Act.* This is not always possible (see *post*, para. 7–15) and when it is not permitted then the levy payer must be content with ascertaining base value solely by reference to current use value plus severance depreciation as set out in the First Subsidiary Equation.

7–15 The Second Subsidiary Equation is:

$$\mathbf{BV} = \mathbf{CFLRD}$$

This means:

Base Value equals Consideration for Last Relevant Disposition (*i.e.*, purchase price on previous sale) (s. 29 (3) and Sched. 5).

In certain circumstances the purchase price paid on the last sale of the land may be used by the levy payer as a base value if it is in his interest so to use it, *i.e.*, if the base value as so ascertained is *higher* than the base value as calculated from current use value of the land and severance depreciation in accordance with the First Subsidiary Equation (Sched. 5, para. 7).

In order that resort may be had to the Second Subsidiary Equation certain conditions must be satisfied as follows:

(1) the previous sale to which reference is sought must have been a sale to the levy payer or to his predecessor in title for valuable consideration (Sched. 5, para. 3);

(2) The previous sale must have been a "disposition falling within the antecedent period," that is to say, a disposition:

(a) made in the period July 1, 1948, to September 22, 1965 (both dates inclusive), *or*

(b) made after that period but before April 6, 1967, in pursuance of an enforceable contract made before September 23, 1965, otherwise than a contract granting an option which was not exercised before September 23, 1965 (Sched. 5, paras. 2 (2) and 3 (*a*)); and

(3) the previous sale (if not a "disposition falling within the antecedent period") must have been a sale after April 6, 1967, which constituted a chargeable act or event which was duly notified to the Land Commission (Sched. 5, paras. 3 (*b*) and 31).

It will be seen that, as time goes on and more and more sales of land come to be made *after* April 6, 1967, it will become increasingly open to a levy payer under Case A to refer back (if he so desires) to the time when he bought the land (after April 6, 1967) and quote, as his base value on the occasion when he comes to sell his land, the price which he himself paid for the land when he bought it.

A previous sale will fail to qualify for use as a base value under the Second Subsidiary Equation if, after it has occurred and before the occurrence of the disposition which gives rise to liability to levy under Case A, a project of material development was begun on the land in question and was notified as a chargeable act or event to the Land Commission (Sched. 5, para. 4).

The reason for the period between White Paper Day (September 22, 1965) and the First Appointed Day (April 6, 1967) being a "close season" for base values is to avoid collusive sales and purchases carried out during this period with a view of establishing inflated base values for use in the calculation of levy after the Act comes into force on April 6, 1967.

7–16 Nevertheless, while the aforesaid period is *generally* a close season for base values, there are certain exceptions to this general rule (see *ante*, Chap. 6, para. 6–15) whereby a sale and purchase during this period may qualify as a base value when calculating levy arising under Cast A. These exceptions cover (Sched. 5, para. 10):

(1) a sale by a local authority and certain other public bodies exempt from levy under section 56 of the Act;

(2) a sale by a charity, of land exempted from levy under section 57 of the Act;
(3) a sale by a statutory undertaker on the National Coal Board of land exempted from levy under section 58 of the Act; and
(4) a sale by the Crown or the Duchy of Cornwall.

The provisions of the Second Subsidiary Equation (in a case where, as above explained, resort may be had to that equation) having been worked out, it is then open to the levy payer, as already stated, to compare the results of each of the Two Subsidiary Equations and to choose as base value the result which gives him the higher base value (Sched. 5, para. 7).

7-17 With base value now calculated it is necessary to return once again to the Basic Equation which, it will be remembered (see *ante*, para. 7–08), is:

$$\mathbf{NDV = MV - BV - EIAR}$$

In this equation the items MV (Market Value) and BV (Base Value) have now been ascertained as explained above. However, before NDV (Net Development Value) can be ascertained it is necessary to look at the meaning and calculation of EIAR (Expenditure on Improvements or Ancillary Rights—Sched. 4, Part V).

7-18 EXPENDITURE ON IMPROVEMENTS OR ANCILLARY RIGHTS, in so far as it has increased the development value of land, is allowed as a deduction from the amount on which levy will bite (s. 29 (3) and (4)).

Expenditure of this kind will include capital expenditure to improve land together with payments (provided they are notified to the Land Commission under Case E—see *post*, Chap. 11) made to secure the grant or the extinguishment of an easement or a restrictive covenant (Sched. 4, Part V). Expenditure on maintenance, repairs or decorations or on any similar matters of a recurrent nature, is not allowed for this purpose (Sched. 4, Part V, para. 45).

With MV (Market Value), BV (Base Value) and EIAR (Expenditure on Improvements or Ancillary Rights) now worked out (as explained above) it will—at last!—be possible to solve the Basic Equation which is (to repeat it again):

$$\mathbf{NDV = MV - BV - EIAR}$$

The solution to this Equation will give the Net Development Value of the Land and Levy (at the prescribed rate for the time being in force) will be payable upon that amount when the chargeable act or event under Case A occurs (s. 29 (2)).

5. Who is Liable to Pay

7–19 When levy is chargeable under Case A the Land Commission will work out the amount which they claim to be payable.

Whether or not the Commission have been notified of the chargeable act or event giving rise to Case A, they may require, from any person entitled to an interest in the land in question, information and documents of any description which they feel requisite to enable them to work out the amount of levy which they claim to be payable and to ascertain the person liable to pay it (s. 43).

Any person who fails to give this information is liable to a fine of £100 (s. 81 (4)). No proceedings for this offence can be brought except with the consent of the Land Commission or by, or with the consent of, the Director of Public Prosecutions (s. 82 (1) (2)). The Commission may mitigate any penalty or compound or stay any proceedings (s. 82 (4)).

For knowingly or recklessly giving false information there is a penalty, on conviction on indictment, of two years' imprisonment or a fine or both, and on summary conviction there is a penalty of imprisonment for three months or a fine of £100 or both (s. 81 (5)).

Where an offence is committed by a body corporate, any director, manager, secretary or other similar officer of the body corporate may be held guilty of the offence if the offence by the body corporate is attributable to the consent, connivance or neglect of such person (s. 97).

7–20 Notice of assessment of levy will be served (see *post*, Chap. 13) by the Land Commission and, under Case A, the person primarily liable to pay the levy will be the grantor, *i.e.*, the person conveying the land or assigning the tenancy of the land (s. 36 (2)) although, when the whole or part of the purchase price is paid (by arrangement with the grantor) to a third person, arrangements are made for apportioning the amount of the levy between the grantor and such third person (s. 36 (3)).

6. Special Provisions as to Levy on Sales to Bodies Possessing Compulsory Purchase Powers

7-21 The foregoing paragraphs of this chapter explain how levy functions in the case of a voluntary sale of land under a freely negotiated contract for sale made between A and B neither of whom is possessed of compulsory purchase powers.

But it may be that A is *obliged* to sell his land to B either under compulsory purchase powers possessed by B, or by agreement made with B but in the "shadow" of B's compulsory powers. This would be an enforced sale made by A. It would, nonetheless, be a chargeable act or event arising under Case A and the purchase-money due to A would be liable to levy.

In these circumstances section 72 together with Schedule 9 to the Act, adapt the provisions of the Act (as discussed above) for assessing levy under Case A on freely negotiated sales of land so as to render them applicable (with modifications) to sales of land to bodies possessing compulsory purchase powers. It is worthy of note that a disposition of land, even though completion takes place *after* April 6, 1967, to an authority possessing compulsory purchase powers is not liable to levy under Case A if the disposition is made in pursuance of a notice to treat served, or a contract of sale made, before that date (Sched. 9, para. 1).

Section 73 of the Act, together with Schedule 10, provide that when the Land Commission acquire land the Commission will pay the purchase price net of levy and the necessary adaptations are made to the provisions of the Act relating to the assessment of levy under Case A.

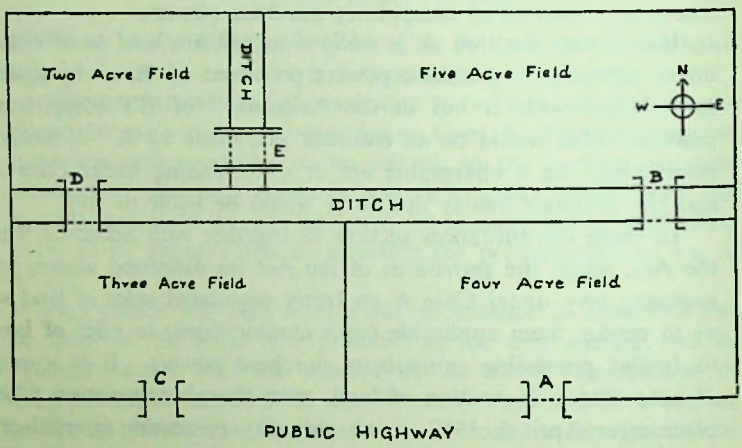
7. Some Examples or How Case A will work

7-22 As already stated, it is felt that Case A is that one of the Six Chargeable Acts or Events which is the most likely to arise in practice. Accordingly, some time has been spent in this chapter in explaining the functioning of Case A. The chapter now concludes with a number of examples illustrating the working of Case A.

7–23 **Three Examples of how Case A will work**

Example 1

Agricultural Land Sold for Development



The facts (see diagram above)

(1) Mr. Barley, a farmer, in 1950 bought four fields known, respectively as Two Acre Field, Three Acre Field, Four Acre Field and Five Acre Field. He paid £500 for each field. Access to these fields is at points A, B, C and D.

(2) Mr. Barley has planning permission to develop Four Acre Field for houses and has contracted to sell it to Mr. Brick (a builder) at some time after April 6, 1967, for £20,000 = (MV).

(3) As part of the arrangement, Mr. Barley is to close up the access point at B and obtain entry to Five Acre Field from the West by building a bridge over the ditch at point E. The cost of closing up access at point B and opening up a new access at point E is £100 = (EIAR).

(4) Agricultural land with vacant possession is worth in 1967, in this district, £250 per acre; thus the area sold (4 acres) has an agricultural value of £1,000 = (CUV).

(5) Five Acre Field will in future be less accessible from the Public Highway and is thereby reduced in value by £20 per acre, that is to say, by £100=(SD).

Object of the exercise

To calculate, on the foregoing facts, the Net Development Value of Four Acre Field.

Method

Solve the First Subsidiary Equation for ascertaining Base Value.

BV = 11/10 of CUV + SD
$\therefore$ BV = 11/10 of £1,000 + £100
$\therefore$ BV = £1,100 + £100
$\therefore$ BV = £1,200

Now take the Second Subsidiary Equation for ascertaining Base Value.

BV = CFLRD
$\therefore$ BV = £500 (price paid for Four Acre Field in 1950)

Thus the First Subsidiary Equation gives the higher Base Value, namely, £1,200.

$\therefore$ use this higher BV in the next step which is to solve the Basic Equation which is:
NDV = MV − BV − EIAR
$\therefore$ NDV = £20,000 − £1,200 − £100
$\therefore$ NDV = £18,700

Levy will thus be payable as a Net Development Value of £18,700.

Example 2

7–24 *Agricultural Land Sold for Development*

The facts

(1) A owns 55 acres of agricultural land. A sells 5 acres after April 6, 1967, to B at the price of £3,000 per acre = £15,000

As part of the arrangement A releases a debt of £1,000 due to A from B = £1,000

∴ Market Value (MV) = £16,000

(2) The agricultural value of this land is £300 per acre
∴ the Current Use Value (CUV) of this 5 acres of land = £1,500

(3) The sale of 5 acres depreciates the remaining 50 acres at the rate of £20 per acre
∴ Severance Depreciation (SD) = £1,000

(4) Prior to the sale of the 5 acres A has incurred expenditure in putting in roads (EIAR) which has benefited the development value of the land to the extent of = £1,200

Object of the exercise

To calculate on the foregoing facts the Net Development Value of the 5 acres sold to B.

Method

The position in this case is thus:

Market Value (MV)		= £16,000
Base Value is 11/10 of £1,500 (CUV)	= £1,650	
Plus Severance Depreciation (SD)	= £1,000	
		= £2,650
Subtracting BV and SD from MV there is left		£13,350
Now deduct value of roads (EIAR)		£1,200
∴ Net Development Value is		£12,150

Levy will thus be payable on a Net Development Value of £12,150.

Example 3

7–25 *House Sold for Change of Use into an Hotel*

Market Value of the Dwelling-House sold after April 6, 1967, with planning permission for change of user to an Hotel (MV)	= £10,000
Current Use Value of the House as a dwelling-house (CUV) = £6,000	
∴ Base Value (BV) = 11/10 of £6,000	= £6,600
∴ Net Development Value	= £3,400

Levy will thus be payable on a Net Development Value of £3,400.

CHAPTER 8

LEVY IN CASE B

1. When it Arises

8–01 THE chargeable act or event which causes levy to arise under Case B is where land is disposed of (ss. 27 and 30) on or after April 6, 1967, by way of:

(1) the grant of a tenancy for a term of years certain of *not less* than seven years; *or*

(2) the grant of a tenancy for *less* than seven years *if the grant is notified to the Land Commission by the grantee* (s. 30 (1)).

The creation of a tenancy by a tenancy agreement or by an agreement for a lease is to be treated as the actual grant of that tenancy by the landlord (s. 85 (3) (*b*)).

8–02 The effective date of a disposition for the purposes of Case B is the date on which the disposition is *executed* by the grantor (s. 85 (4)). This provision should not, however, obscure the provision just mentioned that an agreement for a lease constitutes the grant of a tenancy (s. 85 (3) (*b*)) (provided, of course, the agreement does create a tenancy) with the result that, in any such case, the date of the execution of the agreement for the lease will be the chargeable act or event which gives rise to a liability to levy under Case B.

8–03 Basically Case B is the same sort of thing as Case A. Accordingly, in dealing with Case B reference may usefully be made to the argument as set out in Chapter 7 relating to Case A.

Both Case A and Case B relate to dispositions of land. In Case A the disposition is by way of the sale of a freehold estate or the sale by assignment of the vendor's entire interest in a lease. In either case the vendor parts entirely with his interest in the land which he sells and he gets a sum of money, by way of purchase price, in return.

In Case B the vendor does not part with his entire interest in the land. Out of the interest which he holds he grants a lesser interest in the nature of a lease for which he receives a rental income. The vendor thus retains a reversionary interest in the land.

8–04 It follows that in Case B there are always two interests subsisting at the same time—the reversionary interest of the vendor (or landlord) and the leasehold interest of the lessee or tenant. Again, in Case B there is no once-for-all payment by way of purchase money (as under Case A) but a quarterly, annual or other rental which continues throughout the whole period of the disposition. These are the kind of things which make the calculation of levy under Case B more complex than under Case A, but it is hoped that the detailed example given at the end of this chapter will give a good idea of how Case B may be expected to work out in practice.

2. Notification of Case B to the Land Commission

8–05 If the disposition is a tenancy for seven years or more the grantee is under an obligation to notify the Land Commission of the fact (s. 37 (1)) within *thirty days* of the disposition or such extended period as the Commission may allow (s. 37 (4)). If the disposition is a tenancy for less than seven years the grantee has an option to notify the Land Commission; he can do so if he thinks fit (s. 37 (2)). Notification will help the grantee to found a base value for the calculation of levy if and when there occurs a subsequent chargeable act or event for which the grantee, during his short tenancy, is responsible.

The Betterment Levy (Notification) Regulations 1967, which come into operation on April 6, 1967, prescribe the particulars and manner of notifying an instance of Case B to the Land Commission.

3. Penalty for Non-Notification

8–06 If the grantee of the tenancy in a case where notification to the Land Commission is obligatory (*i.e.*, where the disposition is a tenancy for seven years or more) fails to notify in due time he is guilty of an offence and is liable on summary conviction to a fine of £50 (s. 81 (1)). No proceedings for this offence can be brought except with the consent of the Land Commission or by, or with the consent of, the Director of Public Prosecutions (s. 81 (1) (2)). The Commission may mitigate any penalty or stay or compound any proceedings (s. 82 (4)).

Where an offence is committed by a body corporate, any director, manager, secretary or other similar officer of the body corporate may be held guilty of the offence if the offence by the

body corporate is attributable to the consent, connivance or neglect of any such person (s. 97).

4. How to Calculate the Amount of the Levy

8–07 The method of calculating levy in Case B is more complex than in Case A though the basic principles behind the exercise remain the same. Because there is no lump sum by way of purchase money receivable by the grantor but a recurrent payment of rent, it becomes necessary to capitalise the amount of the rent in order to ascertain what sum the grantor (the landlord) would have received had he made an outright sale of his freehold or (as the case may be) an outright assignment of his leasehold. Then again, it has to be remembered that under Case B the grantor never fully divests himself of his interest in the land—he grants a lease of the land to the tenant and himself retains a reversionary interest.

The simplest way of explaining how the matter will function in practice is to take an example such as the one set out in detail at the end of this chapter. The example there given is likely to be one of frequent occurrence.

5. Who is Liable to Pay

8–08 When levy is payable under Case B the Land Commission will work out the amount which they claim to be payable. Notice of assessment of levy will be served (see *post*, Chap. 13) by the Land Commission and under Case B the person primarily liable to pay the levy will be the grantor of the tenancy (s. 36 (2)), although when the whole or part of the consideration for the disposition (*e.g.*, the rent) is payable (by arrangement with the grantor) to a person other than the grantor, arrangements are made for apportioning the levy between the grantor and any such person (s. 36 (3)).

As under Case A, there are penalties for failure to supply the Land Commission with all requisite information to enable them to calculate the amount of any levy which they claim to be payable (ss. 43, 81 (4), 82 (1) (2) (4) and (5); and see *ante*, Chap. 7, para. 7–19).

6. An Example of How Case B will Work

8–09 A farmer grants to an industrialist a lease of a 4-acre field for use as a factory car park.

The lease is for 10 years and the ground rent payable is £1,200 per annum.

Agricultural land with vacant possession in the district is worth, in the open market, £250 per acre.

The farmer bought the field in 1950 for £200.

1. *Compute Market Value or consideration for the disposition by capitalising the rent receivable*

Rent reserved by lease	£1,200 p.a.	
Present Value of £1 per annum for 10 years @ 7%	7.0	
∴ Capital Value realised =		£8,400.

2. *Compute Base Value*

The granting of the lease by the farmer results in only a part disposal of his interest since he retains the reversion.

(a) Calculate the Reversionary Value on the assumption that the land will be in the same state 10 years hence as it was immediately before the disposition (Sched. 4, para. 12 (2)).

4 acres of agricultural land @ £250 per acre	£1,000
Present Value of £1 in 10 years @ 7%	·5
∴ Reversionary Value =	£500

(b) Calculate the fraction of Current Use Value disposed of by granting the lease (Sched. 4, para. 13).

Add Reversionary Value to Capital Value realised: (*i.e.*, £500 + £8,400 = £8,900

Express $\frac{£8,400}{£8,900}$ as a percentage = 94·4% approx.

(c) Current Use Value relevant to the computation of Base Value is 94·4% of £1,000 = £944.

(d) Base Value = $\frac{11}{10} \times £944 = £1,038$; *or*

94·4% of the consideration for last relevant disposition (£200 in 1950) whichever is the greater (Sched. 5, paras. 15 and 16).

3. *Now solve the basic equation*:

NDV = MV – BV

(*i.e.*) Net Development Value = Market Value – Base Value

$\therefore$ NDV = £8,400 – £1,038

$\therefore$ NDV = £7,362.

Thus Levy is payable in this case on a Net Development Value of £7,362.

CHAPTER 9

LEVY IN CASE C

1. When it Arises

9–01 CASE A has been referred to (see *ante*, Chap. 7) as illustrating what will probably turn out to be the most important and frequently occurring of all the six chargeable acts or events—that is to say, Cases A, B, C, D, E and F—under the Land Commission Act. But if Case A is the most important, Case C would appear to be the most complex and difficult to understand.

9–02 The chargeable act or event which gives rise to Case C is where the carrying out of a project of material development of land is begun on or after April 6, 1967 (ss. 27 (2), 31 and 32). In view of the undoubted complexity of Case C it is comforting to report that where land is sold and bought *at market value* for the purposes of development then, provided such development is begun reasonably soon after the developer gets the land, he will be spared immersion in the choking intricacies of Case C. The reason for this arises from the basic philosophy of the Land Commission Act, namely, that levy is to be charged whenever there is a realisation of development value in land, and that once development value has borne levy it is not to bear it a second time (see *ante*, Chap. 3, para. 3–03).

Thus when A sells land after April 6, 1967, to B for £10,000, A will become liable for levy (under Case A—see *ante*, Chap. 7) on this disposition of his land. The levy will be paid on *all* of the net development value realised by A on the sale of the land. Thus, so far as levy is concerned, the *entire* development value in the land will have been taken care of (under Case A) on the sale of the land from A to B. No more levy can be charged on this same land until somebody realises some further development value out of the land. Consequently, if B, having paid full market value (which includes development value) to A when buying the land for £10,000, will now take the precaution of getting on with his development *before there is any further rise in the market value of the land* (or, in other words, *before the land acquires any further development value*

over and above that which it had when A sold it to B)—then, in such circumstances, B will not have any levy to pay, and this for the simple reason that the land does not contain any development value which was not tapped for levy (under Case A) when A sold the land to B. Never forget: levy is not to bite more than once into the same development value.

It was stated above that B would not be liable for levy under Case C if he got on with his development reasonably soon after buying the land from A and *before* there was any further rise in the market value of the land. It may be, however, that for a variety of good and sufficient reasons B simply cannot get on with his development at once. There may be shortages of labour, shortages of material and (having just paid £10,000 in cash for the land) there may even be shortages of money.

9–03 If such be the case it will be remembered that it is always open to B to apply to the Land Commission for a two-year exemption from levy under section 60 of the Act (see *ante*, Chap. 4, para. 4–06).

This exemption may well turn out to be a most useful one to the "small developer" of land which happens to be situated in an area of rapidly rising land values. The exemption cannot be demanded; it is entirely at the discretion of the Land Commission from whose decision there is no appeal. If exemption from levy is granted by the Commission, then the development *must be begun* (it need not be completed) within two years of the purchase of the land (s. 60 (3)).

The question of when a project of development is begun is a question of fact, but the provisions of section 64 (3) relating to the carrying out of a "specified operation" are helpful in arriving at a decision (see *ante*, Chap. 5, para. 5–17).

9–04 Once the development has been begun the developer who is granted an exemption under section 60 is free of levy in respect of all the development comprised in the project for which exemption was granted, and this is so however long it takes him to complete that project. It is *beginning* the project which is decisive. Having begun he has no need to kill himself in the effort of completing!

It is also to be remembered that the exemption from levy under section 60 is open to *any* developer whatever his project of development may be. The exemption is not limited to houses and residential development; nor does it apply only to "builders and

developers of residential property" as does the exemption in section 62 of the Act.

But even if a purchaser of land does tarry for some time before beginning his development, this does not necessarily mean that he will have to pay levy under Case C. If he can prove to the Land Commission that, in the meantime between purchase and development, there has been no further rise in the development value of the land, then, of course, there can be no liability to levy under Case C because in such a case there would be no new and untapped development value into which levy could bite.

9–05 All the foregoing having been said, it remains to examine a case in which liability to levy under Case C *does* arise and has to be met. Levy under Case C, then, arises where the carrying out of a project of material development is begun *on or after* April 6, 1967 (ss. 27 (2), 32 and 33). (As to a project of material development begun *before* but not completed before April 6, 1967, reference should be made to section 67 of the Act and to Chapter 5, *ante*.)

It will be noted that it is only when the project of development is a project of *material* development that Case C can possibly arise. "Material development" is specially defined (s. 99 (2)) and is discussed earlier (see *ante*, Chap. 2, para. 2–04). It may be repeated here that there is quite a deal of development which can be carried out (with planning permission) but which does not fall within the definition of *material development* and is, accordingly, quite immune to levy under Case C. Thus, when considering Case C the first thing to decide is whether or not the project in hand is a project of *material* development.

Once it is decided that the development in hand is material development, the next thing is to decide what exactly the project of material development may be said to comprise. Here help is obtained from sections 64 and 65 of the Act.

A project of material development means any project (or scheme or plan or conception) whereby any material development is to be carried out (s. 64 (1) and (2)) and the project will comprise *all* development (whether it is material development or not) which is to be carried out, or which has already been carried out, in pursuance of the project, together with all operations in the course of clearing the land on which the development is to be carried out (s. 65 (1) (*a*)). In addition, all land which is to be

developed or cleared (or which has already been developed or cleared) in pursuance of the project is to be regarded as comprised in the project (s. 65 (1) (*b*)).

A project of material development, once defined and isolated as above described, may be subjected to variation as it proceeds. If the variation amounts to the carrying out of *additional* material development, then special provision is made under the Act to cater for this contingency. If the additional development extends on to other land, the project on the other land, together with so much of it as relates to the original land, is considered to be a separate project of material development and is dealt with accordingly (s. 66 (1) (2)). If the additional development is development of the same land, then, if the variation is regarded as substantial, levy may be assessed as though a separate project of development had been begun (s. 66 (1) (3) (4) and (5)).

2. Notification to the Land Commission

9–06 Notification of a chargeable act or event under Case C to the Land Commission is obligatory (ss. 38 (1) and 39). It must be given (a) *not more* than twelve months before the project of material development is begun (s. 38 (2) (*a*)) and (b) *not less* than six weeks before it is begun (s. 38 (2) (*b*)) unless planning permission *authorising* the carrying out of the whole project is in force at the date of notification (*ibid.*). A planning permission is not to be regarded as " authorising " the carrying out of the project unless it is a full and complete planning permission and not merely a planning permission in outline (s. 99 (3)).

The Land Commission may refuse to accept a notification in respect of Case C if there is not in being planning permission authorising the carrying out of the whole project of material development referred to in the notification and the Commission are not satisfied that such planning permission will be forthcoming before the date proposed for the beginning of the project (s. 39 (2)). If the Land Commission decide to reject the notification they must themselves serve a counter-notice of rejection upon the person who notified the Commission, such counter-notice to be served within one month of the notification (*ibid.*).

The notification to the Land Commission of a chargeable act or event under Case C is the responsibility of " the appropriate

person" (s. 38 (1)). This, generally, will be the "developing owner" (s. 38 (3)).

The "developing owner" is the person who owns, or is able to acquire, an interest in all the land to be developed and is in possession of the land on which specified operations (marking the beginning of the project) are started (s. 32 (5)).

If, by chance, there is, for the time being, no person who fulfils the requirements needed to make him a "developing owner," then the Land Commission may themselves designate an "appropriate person" for the purpose of serving notifications relating to Case C (s. 38 (4)).

The Betterment Levy (Notification) Regulations 1967, which will come into operation on April 6, 1967, prescribe the particulars and manner of notification to the Land Commission of a chargeable act or event under Case C.

3. Penalties for Non-Notification

9–07 Any person who, being the "developing owner" (as above defined) *or* being entitled to a "material interest" (as defined by section 38 (6) of the Act) in a project of material development, begins, causes or permits another person to begin, such a project before due notification of it has been given to the Land Commission, commits an offence for which the penalty on summary conviction is a fine not exceeding £500 or twice the amount of the levy payable, whichever is the greater (ss. 38 (1), 80 (1) (2)). The levy is, of course, payable as well (s. 80 (3)).

The Land Commission are enabled to assess and charge levy on any person who begins a project of material development without first giving due notice to the Commission (s. 68).

It will be remembered that the service by the Land Commission of a counter-notice cancels out any notification relating to Case C previously given to the Commission (s. 39 (3)). Thereafter any beginning of the project of material development without further notice to the Commission will be an offence as mentioned above.

No proceedings for any of the foregoing offences can be brought except with the consent of the Land Commission or by, or with the consent of, the Director of Public Prosecutions (s. 82 (1) (2)).

The Commission may mitigate any penalty or compound any proceedings (s. 82 (4)).

Where an offence is committed by a body corporate, any director, manager, secretary or other similar officer of the body corporate may be held guilty of the offence if the offence by the body corporate is attributable to the consent, connivance or neglect of any such person (s. 97).

A person is entitled to a "material interest" in the land comprised in a project of material development if he is entitled to an interest (s. 38 (6)) which:

(a) is *either* the fee simple *or* a tenancy (but not a "minor tenancy") *and*

(b) is *not* in reversion expectant (whether immediately or not) on the termination of a tenancy which, on the date the carrying out of the project is begun, has still more than ninety-eight years to run.

For this purpose a "minor tenancy" means a tenancy for a year, or from year to year, or any lesser interest (s. 85 (1)).

4. How to Calculate the Amount of the Levy

9–08 The method of calculating levy has been dealt with at some length in Chapter 7 where levy under Case A was discussed and a full explanation was given (see *ante*, para. 7–09) of the Basic Equation in this context which is:

$$\mathbf{NDV = MV - BV - EIAR}$$

This same equation lies at the root of the calculation of levy under Case C (s. 31 (2) (3)). Accordingly, when considering levy under Case C reference may usefully be made to the discussion of this Basic Equation given in Chapter 7.

Under Case C there is no disposition (no sale or letting) of land as there is under Case A and Case B. Case C involves the carrying out of a project of material development. Nevertheless, in order to solve the Basic Equation and thereby discover what is the Net Development Value (NDV) of the land—the value into which levy at the prevailing rate will bite—it is necessary to calculate both the Market Value (MV) of the land and the Base Value (BV) of the land.

The calculation for Market Value (MV) is given in Schedule 4, Part III, paras. 16 to 27 inclusive, and that for Base Value (BV) in Schedule 4, Part III, paras. 28 to 34 inclusive.

For Market Value (MV) the method is to calculate (by reference to paras. 16 to 27 of Sched. 4) the notional "full market rent" payable on a 99-year lease of the land and then capitalise it. The lease is deemed to be subject to the conditions and incumbrances set out in the aforementioned paragraphs of Schedule 4 and to carry planning permission for the particular project of material development which it is proposed to carry out, but not for any other form of *material* development. Any such planning permission granted for a limited period is to be regarded, for the purposes of valuation, as having been granted without limitation as to time.

Turning to the calculation of Base Value (BV) for the purposes of Case C, it will be found (under paras. 28 to 34 of Sched. 4) that, as under Case A, Base Value is again 11/10 of Current Use Value (*i.e.*, 11/10 of CUV) plus Severance Depreciation (SD). Again, if it is more agreeable to the levy payer, Base Value may sometimes be ascertained (as under Case A) by reference to a previous disposition (Sched. 5, Pt. I), and in some cases (Sched. 5, Pt. II) it *must* be so ascertained.

The provisions of the Act (Sched. 4, Pt. V) relating to Expenditure on Improvements and Ancillary Rights (EIAR) in relation to levy under Case C are similar to those relating to Case A. The latter were discussed in Chapter 7 at para. 7–18, to which reference may be made when considering such Expenditure in connection with levy arising under Case C.

5. Who is Liable to Pay

9–09 Levy under Case C is payable in respect of any "assessable interest" in the land when the project of material development is begun (s. 31 (1)).

For this purpose an "assessable interest" means (s. 32 (1)):

(a) the fee simple in the land, *or*

(b) a tenancy of the land (other than a "minor tenancy" as mentioned above),

provided that the fee simple or the tenancy is *not* in reversion to a tenancy which has still more than ninety-eight years to run at the date on which the carrying out of the project is begun.

An agreement to grant a tenancy may be treated as if it were the grant of the tenancy itself, provided that the agreement is an enforceable agreement and not one which is conditional upon the carrying out of the project of material development (s. 32 (2) and (3)).

It will be noted that, under the foregoing provisions, a freeholder who has granted the customary 99-year lease for building purposes, will have no liability for levy if his lessee carries out a project of material development which he begins during the first year of the 99-year term. It will, however, be otherwise if the term of the lease is ninety-eight years or any less period.

The person primarily liable to pay levy under Case C in respect of all assessable interests in the land is (s. 36 (4) (*a*)) the "developing owner" (as defined in s. 32 (5): see *ante*, para. 9–06). If no person satisfies the definition of "developing owner" then any person entitled to an "assessable interest" (see above) in the land is liable to pay the levy in respect of *that* interest (s. 36 (4) (*b*)).

9–10 When levy is chargeable under Case C the Land Commission will work out the amount which they claim to be payable.

Whether or not the Commission have been notified of the chargeable act or event giving rise to Case C, they may require, from any person entitled to an interest in the land in question, information and documents of any description which they feel requisite to enable them to work out the amount of levy which they claim to be payable and to ascertain the person liable to pay it (s. 43 (1) (2)).

Without prejudice to the foregoing requirements, where a notice has been served on the Land Commission of intention to carry out any material development (see *ante*, para. 9–06), the Commission may require any person appearing to them to have an interest in the land affected by the development to inform them of his landlord (if any) or the person (if any) to whom he pays rent (s. 43 (3) (*a*)) and also whether or not his interest in the land is in reversion expectant on the termination of one or more tenancies and, if so, the names and addresses of the tenants and particulars of the tenancies (s. 43 (3) (*b*)).

Any person who fails to give any of the foregoing information is liable to a fine of £100 (s. 81 (4)).

Any person who fails to supply information demanded by the Land Commission in a case where the Commission allege that material development has been begun without prior notice to the Commission, is liable to a fine of £100 and to a daily penalty thereafter of £50 (s. 81 (2)).

No proceedings for these offences can be brought except with the consent of the Land Commission or by, or with the consent of, the Director of Public Prosecutions (s. 82 (1) (2)). The Commission may mitigate any penalty or stay or compound any proceedings for these offences (s. 82 (4)).

For knowingly or recklessly giving false information to the Land Commission there is a penalty, on conviction on indictment, of two years' imprisonment or a fine or both, and on summary conviction there is a penalty of imprisonment for three months or a fine of £100 or both (s. 81 (5)).

Where an offence is committed by a body corporate, any director, manager, secretary or other similar officer of the body corporate may be held guilty of the offence if the offence by the body corporate is attributable to the consent, connivance or neglect of such person (s. 97).

6. Example of How Case C Will Work

9–11 (1) A sells, after April 6, 1967, unbuilt land suitable for development, to B at a Market Value (MV) of £16,000

B, however, does not develop the land but quickly sells it, with planning permission for development, to C at a Market Value (MV) of £20,000

B is liable (under Case A) to levy thus:

Base Value (BV) in this instance will be the amount paid by B to A when B bought from A, namely, £16,000

∴ Net Development Value (NDV) is £4,000

Levy will thus be payable by B on a Net Development Value of £4,000.

(2) C then develops the land reasonably quickly, *i.e.*, before there is any further rise in the Market

Value (MV) of the land. C will be technically liable to levy under Case C but, as there has been no further rise in the Market Value (MV) of the land since levy was last imposed, it follows that there is no further development value into which levy can bite. Thus the amount of levy payable will be NIL.

(3) Conversely, C holds on to the land for some years during which time the Market Value (MV) of the land with the same planning permission still attached to it rises from £20,000 to £25,000

C will then be liable under Case C to levy thus:

Base Value (BV) in this instance could be the amount paid by C to B when C bought from B, namely, £20,000

∴ Net Development Value (NDV) is £5,000

Levy will thus be payable on a Net Development Value of £5,000.

CHAPTER 10

LEVY IN CASE D

1. When it Arises

10–01 LEVY in Case D arises when a right to compensation accrues, on or after April 6, 1967, under Part VII of the Town and Country Planning Act 1962 or the corresponding town planning enactments for Scotland (ss. 27 and 33 (1)). The accrual of such a right is a chargeable act or event giving rise to a liability to levy under Case D (s. 27 (3)).

When does such a right to compensation as is above mentioned accrue? It accrues whenever there is a claim for the depreciation of the value of an interest in land (s. 33 (1)) caused by:

(1) an order under section 27 of the Town and County Planning Act 1962 (or section 19 of the Town and Country Planning (Scotland) Act 1947) revoking or modifying a grant of planning permission; *or*

(2) a refusal of planning permission or a grant thereof subject to conditions other than those previously imposed by a development order in the circumstances of section 119 (1) of the Town and Country Planning Act 1962 (or section 20 (3) of the Scottish Act of 1947); *or*

(3) an order to discontinue an existing use of land or imposing conditions on its continuance or requiring existing buildings or works to be altered or removed under section 28 of the Town and Country Planning Act 1962 (or section 24 of the Scottish Act of 1947).

The payment of compensation under the foregoing circumstances represents a realisation of development value in land by the person to whom the compensation is paid. Accordingly, such a person is liable under the Land Commission Act 1967 to levy.

2. Notification to the Land Commission

10–02 Whenever a chargeable act or event giving rise to Case D occurs, notification of the matter to the Land Commission is obligatory. It is the duty of the local authority who will be responsible for the payment of the compensation to notify the chargeable act

or event to the Commission within thirty days after the date on which the compensation is paid (s. 40).

Any agreement *not* to notify the Land Commission about the occurrence of a chargeable act or event under Case D is void if made after December 29, 1965 (s. 83).

The Betterment Levy (Notification) Regulations 1967, which will come into operation on April 6, 1967, prescribe the particulars and manner of notification to the Land Commission of a chargeable act or event under Case D.

3. How to Calculate the Amount of the Levy

10–03 Levy is charged on the amount of the compensation paid out by the local authority but *reduced* (s. 33 (2)) by "the appropriate deduction (if any)."

To ascertain this "appropriate deduction" it is necessary to calculate (s. 33 (3) and Sched. 4, Parts IV and V, together with "the relevant Schedules"—s. 85 (1)):

(a) the amount of the compensation payable (Sched. 4, paras. 35 and 36);

(b) the base value (BV) of the interest which is depreciated (Sched. 4, paras. 37 and 38);

(c) the amount of any expenditure on improvements or ancillary rights (EIAR) in so far as it has increased the development value of that interest (Sched. 4, Part V); and

(d) the "restricted value" of that interest after the depreciation has occurred (Sched. 4, paras. 39 and 40).

When the foregoing calculations have each been made, items (b) and (c) are to be added together and the amount (if any) by which this sum exceeds the restricted value under item (d) must then be ascertained. The amount of any such excess is to be "the appropriate deduction" referred to above (s. 33 (4)), which deduction is to be subtracted from the amount of compensation payable by the local authority in order to find the net amount of compensation on which levy must be paid (s. 33 (2)).

4. Who is Liable to Pay

10–04 The person liable to pay levy under Case D is the person who receives the compensation from the local authority (s. 36 (5)).

Chapter 11

LEVY IN CASE E

1. When it Arises

11–01 Levy in Case E arises whenever, on or after April 6, 1967, land is subject to a disposition, made for valuable consideration and not being a disposition under Case A or Case B (see *ante*, Chaps. 8 and 9), which has the effect of:

(a) granting an easement, *or*

(b) releasing or modifying an easement or a "restrictive right," *provided always* that the disposition is notified to the Land Commission by the person in whose favour the easement is granted, released or modified (ss. 27, 34 (1) and 41). The date when the disposition is executed (s. 85 (4)) is the date of the chargeable act or event in Case E (s. 27 (3)).

For the purposes of the foregoing provisions, a "restrictive right" means a covenant or agreement (not included in a lease) restricting the use or development of land (s. 85 (1)).

2. Notification to the Lands Tribunal

11–02 Notification of any chargeable act or event under Case E is *optional* (s. 41) as it is in the case of a lease for *less* than seven years under Case A or Case B.

Notification under Case E may be made to the Lands Tribunal by the grantee *if he so desires* (s. 41 (1)). If it is going to be made at all it must be made within thirty days after the date of the disposition (s. 41 (3)), but this period may be extended at the discretion of the Land Commission (*ibid.*).

The advantage of notification is that the person notifying will be able, on a subsequent assessment to levy, to claim credit for the payment made for the grant or release as a payment to which paragraph 42 (*c*) of Schedule 4 to the Act applies.

The Betterment Levy (Notification) Regulations 1967, which will come into operation on April 6, 1967, prescribe the particulars and manner of notification to the Land Commission of a chargeable act or event under Case E.

3. How to Calculate the Amount of the Levy

11–03 Levy is charged on the amount of the consideration paid for the disposition *reduced* (s. 34 (2)) by "the appropriate deduction (if any)."

To ascertain this appropriate deduction it is necessary to calculate (s. 34 (3) and Sched. 4, Parts IV and V, together with "the relevant Schedules"—s. 85 (1)):

(a) the amount of the consideration for the disposition (Sched. 4, paras. 35 and 36);

(b) the base value (BV) of the relevant interest (Sched. 4, paras. 37 and 38), such interest being the interest in the land which the grantor has at the date of the disposition (s. 34 (5));

(c) the amount of any expenditure on improvements or ancillary rights (EIAR) in so far as it has increased the development value of that interest (Sched. 4, Part V); and

(d) "the restricted value" of that interest after the disposition has been made (Sched. 4, paras. 39 and 40).

When the foregoing calculations have each been made, items (b) and (c) are to be added together and the amount (if any) by which this sum exceeds the restricted value under item (d) must then be ascertained. The amount of any such excess is to be "the appropriate deduction" referred to above (s. 34 (4)), which deduction is to be subtracted from the amount of the consideration paid for the disposition in order to find the net amount of the consideration on which levy must be paid (s. 34 (2)).

4. Who is Liable to Pay

11–04 The person liable to pay levy under Case E is the grantor of the disposition (s. 36 (2) and (3)).

5. An Example of How Case E Works

11–05 (1) A is the owner of a house and as such he has a right of way over the adjacent land of B.

A agrees to waive his right over B's land in consideration of the payment by B to A of the sum of £2,000

(2) The value of A's house before the waiver (CUV) is £6,000

The value of A's house after the waiver (Restricted Value) is £5,000

(3) The Base Value (BV) of A's house is 11/10 of CUV, that is to say, 11/10 of £6,000, which is ... £6,600
The Restricted Value of A's house is £5,000

∴ the excess of BV over Restricted Value is £1,600

This figure of £1,600 forms " the appropriate deduction " from the figure of £2,000 being the amount of the consideration paid by B to A.

Thus £2,000 − £1,600 = £400.

Levy in this case will be paid on a net development value of £400.

Chapter 12

LEVY IN CASE F

12–01 If levy is not collectable under Case A, B, C, D or E respectively (discussed in previous chapters), then there remains Case F (ss. 27 (2) and 35).

Little can be said here about Case F because the details of any chargeable act or event falling within Case F remain to be settled by regulations to be made by the Minister (s. 35). Any such regulations will need to be approved by resolution of the House of Commons (s. 35 (7)).

12–02 The Minister has not an entirely free hand in the making of these regulations. His power is restricted to the making of regulations covering the following three types of matter, namely:

(1) a disposition for value (*not* being a disposition falling under Case A, B, or E) which does either, or both, of the following things, that is to say,

(a) it renews or extends a tenancy, *or*

(b) it varies a tenancy in order thereby to enable development of land included in a tenancy to be carried out (s. 35 (2));

(2) a disposition for value (*not* being a disposition falling under Case A, B or E or under the disposition just now mentioned above) which grants to a government department, statutory undertaker or other body, and whether under compulsion or voluntarily, a wayleave to place or maintain a main, pipe, cable, wire, or other apparatus in, on, over or under land (s. 35 (3));

(3) the specifying of enactments (other than those already covered by Case D and section 33 of the Act) under which compensation is payable for any action which depreciates the value of land (s. 35 (5)).

Case D, it will be remembered, is limited to compensation payable, under Part VII of the Town and Country Planning Act 1962, in respect of the revocation or modification of planning permission. The regulations here discussed may extend liability to levy in respect of compensation payable under *other Acts* and arising out of the depreciation of land values (s. 35 (5)).

The responsibility for notifying the Land Commission of a chargeable act or event under Case F will be dealt with in the regulations to be made under section 35 of the Act (s. 42).

12–03 The Minister of Housing and Local Government proposes to make the Betterment Levy (Case F) Regulations 1967 to come into operation on April 6, 1967. These Regulations will prescribe details as to:

(1) those matters which will constitute chargeable acts or events under Case F;

(2) the time and manner of notifications of any such matters to the Land Commission; and

(3) the determination of the amount of levy to be charged.

A "disposition" includes the grant of a tenancy, the renewal or other variation of a tenancy, and any other conveyance, assignment, transfer, grant, variation or extinguishment of an interest in or right over land, whether made by an instrument or otherwise (s. 99 (1)).

A disposition is taken to be made on the date on which it is executed or otherwise effected by or on behalf of the grantor and the date of a disposition is to be construed as a reference to the date on which it is so executed or effected (s. 85 (4)).

CHAPTER 13

THE ASSESSMENT AND PAYMENT OF LEVY

1. Service of a Notice of Assessment of Levy

13–01 WHERE the Land Commission are of the opinion that a chargeable act or event has occurred, and whether or not notification of the act or event has been given to them, the Commission may serve a *notice of assessment of levy* on the person liable to pay (s. 44 (1) and (2)).

The Commission have *six years* in which to serve the notice starting from the date of the chargeable act or event on which the notice is based (s. 44 (3)). This period of six years, however, is not binding against the Commission if it is proved that the person on whom the notice of assessment is served (or any other person acting on his behalf and with his knowledge or consent) has knowingly or recklessly made a statement which is false in a material particular in any notice or information given by him in relation to the chargeable act or event on which the notice is founded (s. 44 (4) (*a*)).

Similarly if, in connection with any notice or information about a chargeable act or event, a document is given to the Commission which document has, to the knowledge of the person producing it, been wilfully falsified, then the period of six years is not binding against the Land Commission (s. 44 (4) (*b*)).

If, due to wilful default, notification of a chargeable act or event is not given, or service of notice of intention to carry out material development is not served, again the six-year period is not binding against the Commission (s. 44 (4)).

In the event of the death of a person prospectively liable to pay levy, the notice of assessment of levy will be served on his personal representatives (Sched. 12, para. 5 (1)) in which event notice must be served within *three years* of the death (Sched. 12, para. 5 (2)).

2. Contents of a Notice of Assessment

13–02 A notice of assessment of levy served by the Commission *must*:

(1) *indicate* the chargeable act or event to which it relates;

(2) *specify* the amount of the levy;
(3) *specify* the date on which the levy is charged (a date which must not be earlier than two months from the date of the service of the notice of assessment), *and*
(4) *state* that the levy is chargeable *unless* counter-notice of objection is served upon the Commission within two months (or such extended period of time as the Commission may allow) of the service of the notice of assessment of levy (s. 45 (1) and (3)).

3. Postponement of Levy and Payment by Instalments

13–03 In addition to the foregoing obligatory matters which *must* be inserted in a notice of assessment of levy, the Commission may, if they think fit, state two further matters in the notice, namely:

(1) that the collection of levy, or part of it, may be postponed to some future date if the person on whom the notice of assessment has been served so requests in writing (s. 45 (2) (*a*)); *and*
(2) that the payment of levy may be dealt with by instalments in accordance with sections 50 and 51 of the Act (as to which see *post*, at paras. 13–07, 13–08) if, again, the person receiving the notice of assessment so requests in writing (s. 45 (2) (*b*)).

4. Challenging a Notice of Assessment—Counter-notice

13–04 The recipient of a notice of assessment of levy has *two months* in which to decide whether to accept it or object to it and, if he does desire to object, then he must serve on the Land Commission a counter-notice of objection (s. 46 (1) and (2)). The period of two months for the serving of a counter-notice may be extended if the Land Commission so agree (s. 46 (2)).

The counter-notice must state the grounds on which the person serving it objects to the notice of assessment of levy (s. 46 (3)) and if those grounds include a claim that the levy which, in the circumstances, is properly chargeable is *less* than the amount charged in the notice of assessment, then the counter-notice must state the

amount which the person serving the counter-notice alleges to be the proper amount of levy chargeable (s. 46 (4)).

It will be seen that the notice of assessment of levy served by the Land Commission together with a counter-notice of objection served by the person liable to pay the levy, together constitute a joining of issue on whether or not levy is payable at all and, if it is, in what amount.

5. Settlement of Disputes about Levy

13–05 This issue may be settled between the parties by agreement *in writing* if, of course, agreement can be reached (s. 48 (1)) and, depending upon the terms of such agreement, the notice of assessment of levy will be treated as either:

(1) confirmed, *or*

(2) varied in any particular matter, *or*

(3) withdrawn (s. 48 (1) and (2)).

A counter-notice of objection can be withdrawn by a further notice served at any time before the objection has been referred to, and determined by, the Lands Tribunal (s. 48 (3)) in which event the notice of assessment of levy will be treated as confirmed on the date when the notice of withdrawal is served (s. 48 (3) (*b*)).

If the issue between the Land Commission and the person served with the notice of assessment of levy is not settled by agreement in writing, then the dispute may be referred by either party for arbitration before the Lands Tribunal (s. 47 (1)). At the hearing of the reference the Lands Tribunal may either:

(1) uphold the notice of assessment, *or*

(2) vary it, *or*

(3) discharge it

as the Tribunal think appropriate in the circumstances (s. 47 (2)). The Tribunal, however, have no power to insert, or vary, any provision in the notice of assessment relating to:

(1) the date on which levy is charged, *or*

(2) about payment of levy by instalments, *or*

(3) about the postponement of the collection of levy (s. 47 (3) (*a*)).

Nor have the Tribunal any power to increase the amount of the levy except under section 73 of the Act relating to levy payable on acquisitions by the Land Commission (s. 47 (3) (*b*)). Thus an

aggrieved levy-payer has nothing to lose by going to the Lands Tribunal.

The foregoing, however, does not prevent the Land Commission, in a case where a notice of assessment has been varied by the Lands Tribunal and the notice does not contain any provision relating to the postponement of levy or the payment of levy by instalments, from serving *a further notice* amending the original notice of assessment of levy (as varied by the Tribunal) by the addition of a provision relating to either

(1) postponement of the collection of levy, *or*
(2) the payment of levy by instalments, *or*
(3) both of these matters (s. 47 (4)).

6. Operative Assessment of Levy

13–06 Unless a notice of assessment of levy has been withdrawn by the Land Commission, or has been discharged by the Lands Tribunal, the notice will be taken to result in *an operative assessment of levy* when:

(1) the latest time within which a counter-notice could be served has expired, *or*
(2) the objection has been withdrawn or settled by agreement or the time for pursuing it has elapsed, *or*
(3) the issue has been finally determined by the Lands Tribunal or, on appeal, by the Court of Appeal or the House of Lords,

whichever of these three foregoing matters is the latest to occur (s. 49).

7. Payment of Levy

13–07 Once a notice of assessment of levy becomes operative then the levy itself is due for payment either:

(1) on the date mentioned in the notice of assessment, *or*
(2) in the case of an appeal to the Lands Tribunal *either* on the date mentioned in the notice of assessment *or* upon the expiration of a period of thirty days after the final determination of the matter by the Lands Tribunal, whichever is the later (s. 50 (1) (2) and (3)).

Where, however, in accordance with provisions already discussed, the Land Commission are prepared to agree to a postponement of the date for the payment of levy, then the levy will, of course, become due for payment on whatever date is agreed with the Land Commission as the postponed date (s. 50 (4)).

Where agreement is made with the Land Commission for the levy to be paid by instalments over a period, the period over which the instalments are to be calculated is the period beginning with the date specified in the notice of assessment of levy as the date on which levy is charged (s. 50 (5)).

8. Liability for Interest on Unpaid Levy

13–08 Where levy has become payable, or an instalment of levy has become payable, and in either case the levy is not paid at the due time, interest becomes payable upon the amount of any levy which is for the time being unpaid, the interest being at such rate as may be prescribed by the Treasury (s. 51 (1) and (2)). The Minister may by regulations—subject to annulment by resolution of the House of Commons (s. 51 (9))—provide that in such cases, and subject to such conditions as may be prescribed by the regulations, interest otherwise payable by virtue of section 51 of the Act shall be reduced or shall not be payable at all (s. 51 (4)).

The Betterment Levy (Waiver of Interest) Regulations 1967, which will come into operation on April 6, 1967, provide details as to the waiver (not the reduction) of interest in connection with certain projects of material development the carrying out of which will constitute a chargeable act or event under Case C.

9. Payment of Levy on Account

13–09 Where a notice of assessment of levy has been served and issue is joined with the Land Commission by the service of a counter-notice, then the person on whom the notice of assessment was served may, if he so desires, pay to the Commission a sum on account of the levy (s. 51 (5)). This may be done entirely without prejudice to the counter-notice which such a person has served and

without prejudice also to the determination of any objection which has been lodged to the notice of assessment of levy (s. 51 (6)).

Where a person in dispute with the Land Commission has paid to the Commission a sum on account of levy, then if it is later found (as and when the dispute with the Land Commission is settled) that no levy is payable at all, or that the sum paid on account of the levy is greater than the amount found to be payable as levy, the Land Commission must refund to the payer any moneys overpaid (s. 51 (7)), and any sum so refunded must be refunded with interest at the rate prevailing at the time (s. 51 (8)).

10. Security for Levy Postponed or Paid by Instalments

13–10 Where under provisions of the Act above discussed a person on whom a notice of assessment of levy has been served requests postponement of payment of the levy, or requests that it may be paid in whole or in part by instalments, then in either of these two cases the Commission may require such a person to give such security as the Commission may direct, whether by way of a charge on his interest in the land to which the assessment relates or otherwise (s. 52 (1)).

If such security as the Land Commission request is not forthcoming as required by the Commission, then the Commission may refuse to allow collection of levy to be postponed or to be made by instalments (s. 52 (3)).

Any levy which has become due and payable to the Land Commission may be recovered by the Commission as a simple contract debt in any court of competent jurisdiction (s. 53 (1)).

11. Overpayment of Levy—Action for Recovery

13–11 If a person who has paid levy to the Commission in accordance with a notice of assessment later comes to the conclusion that, by reason of some mistake of fact in documents or information furnished and used for the purposes of assessing the levy, he has overpaid, such a person may, *within six years* of the service of the notice upon him of the assessment of levy, make application to the

Land Commission for relief (s. 54 (1)). There is no power to extend the aforementioned period of six years.

The Commission must then inquire into the matter and give by way of repayment or otherwise such relief in respect of the mistake as is "reasonable and just" (s. 54 (2)). The Commission must give formal notice of their decision to the applicant (s. 54 (3)) and then, at any time within thirty days of the date on which the notice of the Commission's decision was served, the applicant for relief may appeal against the Commission's decision to the Lands Tribunal who, if they allow the appeal, must vary the notice of assessment of levy accordingly (s. 54 (4)). The period of thirty days above mentioned is absolute; there is no power to extend it.

Where the Land Tribunal thus vary a notice of assessment the Land Commission must give, by way of repayment or otherwise, such relief as is requisite to give effect to the decision of the Tribunal (s. 54 (5)).

12. Undercharging of Levy—Further Assessment

13–12 Conversely, if the Land Commission *at any time* after the service of a notice of assessment of levy—and irrespective of whether that notice has resulted in an operative assessment of levy—come to the conclusion that they have undercharged in their assessment of levy, the Commission may serve a further notice of assessment based on the original chargeable act or event (s. 55 (1) and (2)).

This can be done only when

(1) there has been a mistake of fact in connection with the original notice of assessment; *or*

(2) there has been a clerical or mathematical error in calculating the amount of the original notice; *or*

(3) there has been the discovery by the Commission of some fact unknown to them when they served the original notice (s. 55 (2)).

Any such further notice of assessment of levy served by the Commission is subject to the same procedure (discussed above), including appeal to the Lands Tribunal, as applies to an original notice of assessment (s. 55 (4)).

It is to be noted that the opportunity given to the Land Commission to correct mistakes by the service of a second or further notice of assessment seeking the payment of additional levy, is an opportunity which lasts *indefinitely*. It is not subject to the six-year limitation which applies to a person who wishes to claim against the Land Commission that he has been overcharged by the Commission and has, in consequence, paid too much levy.

Chapter 14

ACQUISITION OF LAND BY THE LAND COMMISSION

1. The Attitude of the White Paper

14–01 In the White Paper, "The Land Commission," of September 22, 1965 (Cmnd. 2771), the Government stated (para. 7) categorically that, in their view, it was wrong "that desirable development should be frustrated by owners withholding their land in the hope of higher prices." Accordingly, one of the two main objectives of the Government's land policy was "to secure that the right land is available at the right time for the implementation of national, regional and local plans."

The White Paper went on (in para. 13) to declare that the Land Commission would be able "to buy by agreement any land which they have reason to think may be needed for development. But they must also have effective powers of compulsory purchase if they are to ensure the right land is available at the right time. Some owners of land which ought to be developed may be unwilling to incur levy by selling to a private purchaser (although the levy would leave enough of the development value to provide a reasonable incentive) and may also be unwilling to sell to the Commission (although the net proceeds would be the same as if they were selling to anyone else)."

The foregoing sentiments on the part of the Government find full expression in Part II of the Land Commission Act relating to the acquisition, management and disposal of land.

Bearing in mind the inept powers of acquisition conferred on the Central Land Board under the Town and Country Planning Act 1947, great efforts have clearly been taken this time to ensure that the Land Commission Act confers full and ample powers relating to land acquisition upon the Land Commission. Indeed, these powers are some of the fullest and some of the most drastic yet conferred upon a public authority for use in times of peace.

2. Acquisition by Agreement or Compulsion

14–02 The Land Commission are given a general power to acquire land either by agreement or compulsorily, if, in their opinion, the

land is " suitable for material development " (s. 6 (1)). The land, it will be noted, is not required to be *needed* for material development but merely *suitable*. Thus the Commission may acquire land which is suitable for material development far in advance of the time when it will be needed for actual development.

Ministerial pronouncements leave no doubt that it will be the policy of the Land Commission to acquire land in advance of requirement and thereby build up what has been called a " land bank " on which the Commission can draw when the need for development arises. The Commission will thus be able to acquire virgin territory long before it is *needed* for development and long before its value as land ripe for development has risen in the open market.

The land must (as has been stated) be " suitable for material development " and " material development," it will be remembered, is especially defined in the Act and is dealt with fully in Chapter 2, *ante*.

14–03 It may be reiterated, briefly, that material development means (s. 99 (2)) *all* development except the following namely:

(1) permitted development under the Town and Country Planning General Development Order 1963;

(2) development falling within the tolerances of the Third Schedule (except para. 4) to the Town and Country Planning Act 1962; and

(3) such other kinds of development as are prescribed by the Material Development (Exceptions) Regulations 1967 to be made by the Minister and to come into operation on April 6, 1967.

The Land Commission are also given power to acquire by agreement or compulsorily any land which is contiguous or adjacent to the land which is " suitable for material development " if such additional land is, in their opinion, required for the purpose of executing works for facilitating the development or use of the land which they seek to acquire as being suitable for material development (s. 6 (2)).

3. Conditions Precedent to Compulsory Purchase

14–04 Compulsory acquisition of land by the Commission is by means of a compulsory purchase order and before the Commission can

proceed to make such an order one of five conditions precedent must be satisfied (s. 6 (3)). Accordingly, each of these conditions precedent is a matter of importance. They may be described briefly as follows.

14–05 The first condition requires that planning permission for the carrying out of material development of the land sought to be acquired must be in force and that the whole or part of the development authorised by the permission must not have been carried out (s. 6 (3) (*a*)). "Planning permission" here includes an outline planning permission (s. 6 (7) and s. 99 (3)).

14–06 The second condition requires that in the current development plan relating to the area in which the land sought to be acquired is situated (or in any proposals for amending the plan) that land must be either:

(a) defined, *or*

(b) otherwise indicated (in the manner prescribed by The Compulsory Acquisition of Land (Development Plan) (Specification) Regulations 1967), *or*

(c) allocated

for purposes of any such description as may be prescribed by the Minister for the purposes of subsection (3) of section 6 of the Act (s. 6 (3) (*b*)). It is important to note that this defining, otherwise indicating, or allocating of land can be done not merely in the current development plan, but also in *any proposals* which have been submitted by a local planning authority to the planning Minister with the object of altering or adding to an operative development plan (*ibid.*).

Thus, in order to see if this particular condition precedent is satisfied it will be necessary not merely to examine any current development plan, but also to ascertain whether any proposals for amending that plan have been submitted by the local planning authority to the Minister.

14–07 The third condition requires that the land to be acquired shall be designated as subject to compulsory acquisition in the current development plan (s. 6 (3) (*c*)).

14–08 The fourth condition requires that the land to be acquired shall form part of an area designated as the site of a new town under the New Towns Act 1965 (s. 6 (3) (*d*)).

14–09 The fifth condition requires that the land to be acquired shall be, or shall form part of, an area which has been declared to be a

clearance area by resolution of a housing authority functioning under section 42 of the Housing Act 1957 (s. 6 (3) (*e*)).

It is to be emphasised that when one or other of these five conditions is satisfied then the Land Commission may go into action. It thus follows that whenever a landowner gets planning permission for " material development " of his land, condition No. 1 instantly becomes fulfilled and the Land Commission may step in with a compulsory purchase order.

Indeed, every time *any* person gets planning permission for material development of someone else's land (as *any* person can) then, again, the Land Commission may take action with the object
14–10 of acquiring the land compulsorily for themselves.

If the Land Commission wish to acquire land compulsorily but find that none of the above conditions precedent is satisfied then, of course, it is always open for the Commission themselves to apply to the local planning authority for planning permission for material development of the land and if they get such permission, then instantly the first of the aforementioned five conditions becomes satisfied and the Commission can move forward to acquire the land by compulsory purchase.

It is worthy of note that the first of the conditions precedent to action by the Land Commission relates to there being available planning permission for material development. It is not every planning permission for development which is able to galvanise the Land Commission into action for compulsory purchase.

The definition of " material development " (s. 99 (2)) is mentioned earlier in this chapter (at para. 14–02) and is discussed more fully in Chapter 2, *ante*.

There is a good deal of development for which planning permission is required but which does *not* constitute " material development " under the Land Commission Act. Planning permission for such development cannot pave the way for a compulsory purchase order by the Land Commission.

4. The Purposes of Acquisition—To Tell or Not to Tell—Reasons but not Purposes

14–11 The next matter for consideration is whether in connection with compulsory acquisition the Land Commission have to disclose the purposes for which they require the land beyond the mere averment that, in their opinion, the land is " suitable for material

development." Here a great deal turns on whether or not the Commission are seeking to acquire the land before or after the second appointed day.

The first appointed day will be April 6, 1967, when the Act comes into operation. The second appointed day will be sometime later and no mention has yet been made as to when this will be.

14–12 However, the Act provides (s. 6 (4)) that between the first appointed day and the second appointed day the Land Commission may *not* acquire land compulsorily except for one of the following purposes, that is to say:

(a) for securing the carrying out at an early date of material development which the Commission feel ought to be carried out;

(b) for securing that the land is developed as a whole or as part of an area which the Commission feel ought to be developed as a whole;

(c) for making the land available for development or use by a person or body of persons who could be authorised to acquire it compulsorily; and

(d) for disposing of the land in accordance with the provisions of section 18 of the Act relating to concessionary crown-holds (as to which see *post*, at para. 16–03).

The second appointed day will be fixed by an Order which must be laid before Parliament and approved by resolution of each House of Parliament (s. 6 (6)).

14–13 After the second appointed day the Land Commission may acquire any land which in their opinion is suitable for material development whatever may be the purpose for which they seek to use it—the inhibitions of section 6 (4) will no longer apply. In other words, after the second appointed day the Land Commission may acquire land compulsorily for *any purpose whatsoever*.

The Acquisition of Land (Authorisation Procedure) Act 1946 is applied by the Land Commission Act, s. 7 (1) to any compulsory acquisition of land by the Land Commission. This being so, it would have been necessary, by virtue of the First Schedule, paragraph 3 (*a*) to the 1946 Act, for the Land Commission to declare the purpose or purposes for which the land to be acquired by the Commission was required.

14–14 This indeed is the position up to the date of the second appointed day. After the second appointed day, however, the

Land Commission will not have to declare the *purposes* for which they need to acquire land but they will have to specify their *reasons* for acquiring the land. This is by virtue of section 7 (4) of the Land Commission Act which is in the following terms:

> " (4) So much of Schedule 1 to the Acquisition of Land Act or of any regulations made under that Act, as requires a notice relating to a compulsory purchase order to specify the purpose for which the land is required, or for which it is authorised to be compulsorily purchased, shall, in relation to any such notice published or served by the Commission on or after the second appointed day, be construed as requiring the notice to specify the reasons for which the Commission propose to acquire the land."

The foregoing provision was inserted into the Bill for the Land Commission Act at a late stage in the House of Lords.

In moving this provision the Parliamentary Secretary to the Ministry of Housing and Local Government (Lord Kennet) said, when referring to the circumstances of any public inquiry held in connection with the compulsory acquisition of land by the Land Commission (H.L. Vol. 279, col. 43, January 17, 1967):

> " Let us imagine a hearing in the case of a compulsory purchase order desired by the Commission. One might imagine the hearing beginning in one of two different ways. One way would be for the members of the Commission to sit with folded arms, listening to the owner of the land saying why he did not think the Commission should have his land. The other way which one can imagine would be for the owner of the land to sit with folded arms while the Commission said why it wanted his land. I think everyone would agree that the latter is the way we want it to be done, with the Commission having to speak first and make out its case for the use of this compulsory purchase order procedure. The Government were perfectly confident that would happen, even without this Amendment, but we have written it into the Bill to make assurance doubly sure."

5. Compulsory Purchase—Normal Procedure

14–15 The procedure for the compulsory acquisition of land by the Commission is of two kinds. There is the normal procedure (s. 7) and there is the special or abnormal procedure (s. 8).

Under the normal procedure the familiar routine of the Acquisition of Land (Authorisation Procedure) Act 1946 is followed with the Land Commission functioning as if they were a Minister (s. 7 (1)). If, however, any objection is lodged to the making of a compulsory purchase order, then the making of the order has to be authorised by the Minister of Housing and Local Government or, where the Commission are buying land for the purposes of a public authority, by the Minister who would have approved such compulsory purchase for that authority (s. 7 (2) and (3)).

Accordingly, if objection is made to the order then this will lead to the holding, under the 1946 Act, of a local inquiry at which it will be the duty of the Land Commission, at least until the arrival of the second appointed day, to declare and demonstrate the purposes for which they need to acquire the land.

After the second appointed day (as has already been mentioned) the Land Commission will no longer be obliged to declare *the purposes* for which they require land; they will, however, have to give their *reasons* for acquiring land. This is not necessarily the same thing.

6. Compulsory Purchase—Special (Speedy) Procedure

14–16 The normal processes of compulsory purchase by compulsory purchase order do, it must be admitted, take time and there are those who conceive that the Land Commission may, on occasion, find themselves short of time for one reason or another.

Accordingly, the Act makes provision for an especially speedy and simplified procedure for the obtaining of a compulsory purchase order (s. 8 and Sched. 2). This speedy form of compulsory purchase procedure will be brought into operation by ministerial order if the Minister thinks it necessary in the public interest (s. 8 (1)).

Purchases under a compulsory purchase order obtained by way of the special procedure can only be made within a period of five years from April 6, 1967 (s. 8 (1)), unless the Minister sees fit to extend this period by order (s. 8 (5)).

Under this special procedure the Land Commission may obtain a compulsory purchase order without having to go through the rigours of facing a public inquiry or a private hearing, and also with a considerably easier method of serving notices (s. 8 (1) and Sched. 2, para. 3 (2)).

It is important to note that this special procedure is *not* to apply in the case of an owner-occupied dwelling-house if the occupier objects to the compulsory purchase order (Sched. 2, para. 3 (3) (4) (5)).

7. Registration and Revocation of Compulsory Purchase Orders

14–17 Once the Commission have obtained their compulsory purchase order (whether by the normal or by the special procedure) the order must be registered as a local land charge (s. 11 (1)).

The Act allows any such order to be revoked in respect of all or part of the land included within it without prejudice, however, to any action already taken under the order (s. 11 (3) and (4)).

8. The General Vesting Declaration—Instant Conveyancing

14–18 Having got a compulsory purchase order in their favour the next thing for the Land Commission to do is to get possession of the land referred to in the order. Here again it has been felt that the Land Commission may find themselves short of time and, accordingly, an expedited method of getting hold of land included in a compulsory purchase order is provided for in the Act.

This accelerated mode of acquisition is by means of a general vesting declaration executed in the prescribed form by the Land Commission (s. 9 (1)). The prescribed form is set out in the Vesting Declaration (Prescribed Forms) Regulations 1967. The Commission do not pay stamp duty (s. 25 (3)).

A general vesting declaration cannot be executed (except with the consent in writing of all occupiers of land included in the declaration) before the end of a period of two months beginning with the date of the first publication (under paragraph 6 of Schedule 1 to the Acquisition of Land (Authorisation Procedure) Act 1946 as applied by section 7 (1) of the Land Commission Act) of notice of the making of the compulsory purchase order, or such longer period, if any, as may be prescribed by the compulsory purchase order (s. 9 (2)).

The Land Commission must serve notices as soon as may be after executing a general vesting declaration specifying the land

included in the declaration and stating the effect of the declaration (s. 9 (3)). Such notices must be in the form prescribed by The Vesting Declaration (Prescribed Forms) Regulations 1967.

The effect of a general vesting declaration is (s. 10) to vest in the Commission the land referred to in the vesting declaration as from the end of such period as may be specified in the declaration (not being less than twenty-eight days) from the date of the service of notices stating the effect of the declaration (s. 9 (1) and (3)). All interests in the land (except certain short-term tenancies) become vested in the Commission (s. 10 (2) and (3)).

The vesting declaration gives immediately to the Land Commission a good title to land (even though the Commission themselves have made no investigation of title at all) thereby enabling the Commission to dispose of such land for development as soon as the vesting declaration takes effect. This will avoid what the White Paper calls "the delays of the normal conveyancing procedure" (White Paper, para. 19). In fact there is no real conveyancing in the matter at all. Whoever previously owned the land may be a matter of argument. Whoever owns the land after the vesting declaration is beyond argument. The Land Commission get an unassailable title to the land and this they get by virtue of the Act of Parliament itself.

9. Compensation Payable on Compulsory Purchase

(*a*) *Market value less levy*

14–19 The next question is what compensation does the Commission pay for the land which they acquire, whether compulsorily or by agreement? The answer is that the Commission must at all times pay compensation as if the land had been taken under section 11 (1) of the Compulsory Purchase Act 1965. This is by virtue of section 10 (6) and Schedule 3, para. 14, of the Land Commission Act.

This means the Commission must pay market value for any land which they acquire but they will pay such value *less* the amount of any levy due to the Commission from the vendor of the land (s. 73 (4)). Disputes about compensation for land acquisition will be settled, as is the normal rule, by the Lands Tribunal.

Money needed for the acquisition of land by the Commission is to be provided from the Land Acquisition and Management Fund set up under the Act (s. 2).

If the Commission happens to be acquiring a house declared unfit for human habitation, then, like a local authority, they will pay site value only (s. 23).

(*b*) *Recovery of compensation overpaid*

14–20 If it subsequently transpires that, for one reason or another, the Land Commission have paid too much for the land which they have acquired, then they are entitled to recover in whole or in part any sums overpaid (s. 24 (2) and (3)). Sums overpaid will be recovered as a simple contract debt (s. 24 (5)) and there is no time limit for the commencement of proceedings for recovery, the words of the Act being (s. 24 (2)) if "it is subsequently shown" that moneys have been overpaid by the Commission then the Commission may take action to recover them (s. 24). Disputes about any amount claimed by the Commission as due for recovery by them will be settled by the Lands Tribunal (s. 24 (4)). Any sums recovered by the Land Commission must be paid into the Land Acquisition and Management Fund (s. 24 (6)) set up under s. 2 of the Act.

(*c*) *Penalties for false claims*

14–21 It is an offence for any person, with the object of getting compensation in respect of the acquisition by the Commission of an interest in land by means of a general vesting declaration,

(a) knowingly or recklessly to make a false statement, or
(b) with intent to deceive, to produce any false book, account or other document, or
(c) with intent to deceive, to withhold any information (s. 93 (1)).

The penalty for such an offence is, on conviction or indictment, imprisonment not exceeding two years or a fine or both, and on summary conviction, imprisonment not exceeding three months, or a fine of £100 or both (s. 93 (2)).

Where an offence is committed by a body corporate, any director, manager, secretary or other similar officer of the body corporate may be guilty of the offence if the offence by the body corporate is attributable to the consent, connivance or neglect of such person (s. 97).

10. To Buy or Not to Buy?—Forcing the Hand of the Land Commission

14–22 It was explained earlier in this chapter that before the Land Commission can set off in the path of compulsory purchase one of five conditions precedent must be satisfied (s. 6 (3)). The first one of these conditions refers to planning permission for " material development," *i.e.*, not any form of development but only " material development " as defined in section 99 (2) of the Act.

Whenever you (or somebody else for that matter) obtains a grant of planning permission to carry out material development of your land this entitles the Land Commission (if they so desire) to step into the arena with a compulsory purchase order for your land. Do you have to wait indefinitely in order to ascertain whether you are going to be left in peace or whether the Land Commission is going to move in and buy?

The answer is that you have no means of forcing the hand of the Land Commission until after the arrival of the second appointed day which will be fixed by ministerial order made under section 6 of the Act. No date for the second appointed day has so far been mentioned.

However, *after* the second appointed day there will be a way of forcing the hand of the Land Commission in the circumstances above mentioned (s. 22 (1)).

Any person having a " material interest " (s. 22 (1) and (6)) in the land can, within three months of the grant of planning permission for material development of the land, serve the Commission with a notice requiring them to elect whether to buy the land or not (s. 22 (1)).

Within a further period of three months the Commission must serve a counter-notice stating whether they do, or do not, propose to acquire the land (s. 22 (2)).

If the Commission say " yes " they must then acquire the land within twelve months or lose the right to do so compulsorily for five years (s. 22 (3) and (5)).

If the Commission say " no " they lose the right to acquire the land compulsorily for five years (s. 22 (4) (*a*)).

If the Commission fail to serve the counter-notice as above mentioned then, again, they lose the right to acquire the land for five years (s. 22 (4) (*c*)).

11. Repeal of Part IV of the Land Compensation Act 1961

14–23 In view of the large sums of extra money which had to be paid by a local authority in the *Lavender Hill* or *Enfield Allotments* case in 1966, the Land Commission Act has taken the opportunity to repeal Part IV of the Land Compensation Act 1961 whereby, if within five years of the compulsory acquisition of land by a public authority the land came to be used for more remunerative purposes than were contemplated when compensation was originally settled, the whole matter could be reopened and additional compensation could be claimed from the acquiring authority.

This right to claim additional compensation in the foregoing circumstances is now abolished with respect to any notice to treat served on or after January 1, 1967, and on any sale by agreement made on or after that date (s. 86)

CHAPTER 15

THE USE AND MANAGEMENT OF LAND BY THE LAND COMMISSION

1. General Power to Use and Manage Land

15–01 THE general tenor of the Land Commission Act, irrespective of specific statements by Ministers, makes it clear that the Land Commission will often be acquiring land in advance of need—both undeveloped land and developed land which is in need of redevelopment. The last is undoubtedly a reference to what are sometimes called the " twilight areas " of the industrial towns of England and Wales—those areas of obsolescent housing, industrial and commercial development, which are the aftermath of the industrial revolution and which have never yet, for one reason or another, been brought up to date.

Accordingly, having acquired land whether by agreement or compulsorily, the Land Commission are given all the powers necessary to manage and to improve such land whilst it remains in their possession, including power to carry out any necessary works of development or improvement (s. 12 (1)).

Whilst the Commission thus have a general power to develop land which they hold, they do not, however, have any power to build houses except with the consent of the Minister of Housing and Local Government (s. 12 (2) (3)).

Though the Land Commission may be responsible for developing land which they hold, they need not actually do the development themselves. They can authorise local authorities to act in this respect as agents of the Commission (s. 12 (4)).

All sums of money accruing to the Commission as a result of the acquisition and management of land are to be paid into the Land Acquisition and Management Fund (s. 2).

2. Application of Building and Planning Controls

15–02 It is to be noted that any development of land by the Land Commission will be subject to by-law of control and to town

planning control just as will be the case if the land were being developed by a private individual (s. 13). This means, amongst other things, that the Land Commission are subject to the enforcement notice procedure of the Town and Country Planning Act 1962.

3. Overriding Obstructive Easements and Rights

15–03 The provisions of sections 81, 164 and 165 of the Town and Country Planning Act 1962 are applied to any development of land undertaken by the Land Commission (s. 14), with the result that all obstructive easements, rights (including those of statutory undertakers) may be overridden by the Commission.

4. Protection for Transferee of Land from Land Commission

15–04 It is worthy of special note that this right to override easements and statutory rights will also apply to any transferee of land from the Land Commission, provided such transferee has not only planning permission for his development but also *the written approval of the Land Commission* to whatever development it is which he seeks to carry out (s. 14 (2)).

Thus, it will be wise indeed for any person taking a disposal of land from the Land Commission, whether by freehold, leasehold or crownhold (as to which latter, see *post*, at para. 16–03), to make sure that before such person commences development of the land he not only has all appropriate by-law and town planning approvals for the development but also the written approval of the Land Commission to his development. Such person will have had to pay the Land Commission full market value for the land which he takes from them and so it will be wise for him to ensure that when he takes the land from the Land Commission he takes it free of obstructive easements and statutory rights.

In this connection it must be remembered that the Land Commission will not have investigated title before they vested the land in themselves. Accordingly, the person taking land from the Land Commission must see to it that, so far as obstructive easements and statutory rights appertaining to the land are concerned, these may be overridden by him just as easily as they would have been overridden by the Land Commission had the Land Commission themselves been carrying out development of the land.

Chapter 16

THE DISPOSAL OF LAND BY THE LAND COMMISSION

1. General Power of Disposition at Market Value Prices

16–01 Having acquired land but not being wishful to develop it or manage it themselves the Land Commission are given the widest powers to dispose of it (s. 16). The Commission may make such dispositions of the land as appear to them to be expedient in the public interest (s. 16 (1)), but they must always remember to charge full market value for any such disposition (s. 16 (2)) except

(1) in a case where the Minister of Housing and Local Government (acting under section 1 (3) of the Act) directs otherwise, *or*

(2) in a case where the Commission dispose of land by means of a concessionary crownhold disposition (see *post*, at para. 16–05).

The disposal of land by the Commission may be by means of a sale, a lease or a tenancy (s. 16 (2)).

All sums received by the Commission on the disposal of land are to be paid into the Land Acquisition and Management Fund (s. 2).

2. Minister's Directions as to Disposal

16–02 The Minister may give the Commission such directions, whether of a general or a specific character, as he thinks fit in connection with the performance of their functions relating to the acquisition, management and disposal of land (s. 1 (3) (*a*)). The Minister may thus direct the Commission to acquire the land of one particular person and dispose of it to another particular person.

It is to be noted that the Commission may dispose of land for a purpose even if that purpose is wholly different from the purpose for which the Commission acquired the land in the first place (s. 16 (5)).

This is so except in a case where, before the arrival of the second appointed day, the land was acquired by the Commission

under section 6 (4) (*c*) for the purpose of being made available to a body having compulsory purchase powers, in which case disposal of the land for a purpose different from that for which it was acquired needs to have the Minister's consent (s. 16 (5)).

3. Crownhold Disposition—Crownhold Covenants

16–03 A novel feature of land disposal available to the Commission is the "crownhold disposition." A crownhold disposition makes land available, whether by conveyance in fee simple or by the grant of a lease or a tenancy, for development but secures that any future development value in the land will go to the Land Commission (s. 17 (1) and (2) (*b*)).

This securing of control over future development value arising upon land disposed of by the Commission is secured by means of crownhold covenants (s. 17 (3)) which run with the land and bind all successors in title of the covenantor (s. 19 (2)) notwithstanding (s. 19 (6)):

(1) section 84 of the Law of Property Act 1925 (s. 19 (6));
(2) the rule against perpetuities (s. 19 (7)); and
(3) section 19 of the Landlord and Tenant Act 1927 in the case of a concessionary crownhold covenant (s. 19 (6)).

4. Enforcing Crownhold Covenants by Revesting of Land in Land Commission

16–04 The Act creates a special procedure for the enforcement of crownhold covenants. They are to be enforced in accordance, and only in accordance, with the routine established by sections 20 and 21 of the Act (s. 19 (1)).

Enforcement is secured by notice of breach of the covenant being served upon the person alleged to be in default (s. 20). The recipient of a notice of breach of a crownhold covenant may challenge this in the county court within a period of six weeks (s. 20). If this is done then no further action can be taken by the Land Commission except with the consent of the county court and on such terms as the county court thinks fit (s. 20 (4)).

If a notice of breach is not challenged, or if the Land Commission's action in serving the notice is upheld by the county court, then it is open to the Commission to execute a vesting declaration which has the effect of revesting in the Commission ownership of the land previously disposed of by them (s. 21 (1) and (2)). (This vesting declaration should not be confused with the *general* vesting declaration referred to in s. 9 of the Act.)

The vesting declaration will be in the form prescribed by The Vesting Declaration (Prescribed Forms) Regulations 1967 and will be exempt from Stamp Duty (s. 25 (3)).

The Land Commission must, of course, pay compensation upon any revesting of land. The amount of the compensation is basically the market value of the land at the time of revesting but no account is to be taken of the following, namely:

(1) any increase in value of the land due to development which has been carried out in contravention of a crownhold covenant (s. 21 (4) (*a*));
(2) any decrease in value attributable to the fact that the Land Commission are possessed of a right of pre-emption in the concessionary crownhold disposition (s. 21 (4) (*b*));
(3) any damage caused by severance (s. 21 (4)); and
(4) any damage caused by disturbance (s. 21 (4)).

5. Concessionary Crownhold Dispositions for Housing

16–05 As has been stated earlier in this chapter, any disposition of land by the Commission whether by way of freehold, leasehold or crownhold must be at the best price that can reasonably be obtained, that is to say, it must be at market value except (s. 16 (2)) in a case where the Minister directs (under s. 1 (3)) otherwise or where the disposition is by way of a concessionary crownhold disposition under section 18.

A concessionary crownhold disposition is, however, of restricted application. It can only relate to a case where land is disposed of by the Commission for the purposes of *housing* (s. 18 (1)).

The disposition must specify the sum by which the selling or leasing price of the land falls short of the best price obtainable (s. 18 (2)). Furthermore, the disposition must contain all such

covenants—crownhold covenants—as are necessary to ensure (s. 18 (4) and (5)):

(1) that no tenancy of the land shall be granted except with the written consent of the Land Commission; and

(2) that the Land Commission shall have a right of pre-emption in the event of there being any proposal by the transferee of the land to sell the land or any part of it.

If the right of pre-emption vested in the Land Commission is exercised, what compensation does the Land Commission pay? This is dealt with in section 18 (6) and is a sum which will be equal to the compensation which would be payable by the Commission—

(1) if the covenant conferring the right of pre-emption had been broken, and

(2) if, in consequence of such breach, the Commission had executed a vesting declaration revesting the land in the Commission under the powers of section 21 of the Act.

In other words, the Commission pay market value less the value of the concession.

Chapter 17

APPLICATION TO SCOTLAND

17–01 The Land Commission Act 1967 applies to the whole of the United Kingdom, that is to say, to England, Wales and Scotland but not to Northern Ireland (s. 102).

The application of the Act to Scotland requires adaptation and modification (both of a modest kind) by reason of three facts which are as follows:

(1) the difference north of the Border in nomenclature and terminology in a variety of matters relating to land and the ownership, possession or occupation of land (including, of course, buildings on land);

(2) the enactment in time past of separate Acts of Parliament (one for England and Wales and one for Scotland) relating entirely to the same matter—as, for example, the Land Compensation Act 1961 for England and the Land Compensation (Scotland) Act 1963 for Scotland; the Acquisition of Land (Authorisation Procedure) Act 1946 for England and the Acquisition of Land (Authorisation Procedure) (Scotland) Act 1947 for Scotland; and

(3) the establishment of the Secretary of State (for Scotland) as the Minister responsible in Scotland for matters relating to town planning control and the Land Commission, whilst in England the Minister of Housing and Local Government deals with town planning control and the Land Commission.

There is no call to make heavy weather of these highly technical distinctions relating to Scotland and England. Practitioners north of the Border are well aware of them all and are both accustomed and adept at inserting their own words, phrases and mystique at the appropriate time and in the right places.

Accordingly, it is hoped that this book will be of use and assistance to all those in Scotland who have the responsibility of dealing with the Land Commission Act 1967. The author ventures to aver that the pages of the book are as relevant to the Scottish Scene as to the English one, and this for the simple reason that

the book deals with general principles and not with detailed technicalities. The principles of the Land Commission Act (its philosophy, its thinking and so forth) are equally applicable north and south of the Border. Thus, if this book has any place at all in England it ought to have one also in Scotland. The author hopes it will have a place in both countries.

17–02 The main section applying and adapting the Act to Scotland is section 100, but references to Scotland are sprinkled freely throughout the 189 pages of the Act. Indeed, for the statistically-minded (as also for the record) it can be stated that the Land Commission Act 1967 makes special reference to Scotland, or to Scottish enactments or to matters peculiar to Scotland, in each of the following sections and schedules, namely:

In Part II of the Act:

s. 6 (3)
s. 9 (5)
s. 10 (4) (5)
s. 11 (2) (4)
s. 12 (3)
s. 13 (3) (5)
s. 15
s. 16 (6)
s. 17 (3)
s. 18 (4)
s. 19 (4) (9)
s. 20 (4)
s. 21 (3) (5)
s. 23 (2)
s. 24 (7)
s. 26 (1) (2)

In Part III of the Act:

s. 33 (1) (5)
s. 35 (4)
s. 49 (2)
s. 52 (2)
s. 53 (2)
s. 56 (4)
s. 57 (6)

In Part IV of the Act:

s. 86
s. 88 (5) (6)
s. 96 (1)
s. 99 (1) (2) (8)
s. 100
s. 101

In Schedule 2 to the Act:
para. 4

In Schedule 3 to the Act:
paras. 1, 2, 12, 14, 15, 16, 17, 18, 20

In Schedule 5 to the Act:
para. 30

In Schedule 6 to the Act:
paras. 1, 2, 4

In Schedule 7 to the Act:
paras. 25, 29

In Schedule 9 to the Act:
paras. 4, 12

In Part III of the Act :

s. 58 (3)
s. 59 (3) (4)
s. 62 (3)
s. 65 (7)
s. 75 (2)
s. 82 (2)
s. 85 (2) (7)

In Schedule 12 to the Act :

para. 12

In Schedule 14 to the Act :

In Schedule 15 to the Act :

In Schedule 16 (Part II) to the Act :

In Schedule 17 to the Act :

APPENDIX

" One of the features of the Bill is that clause after clause contains the definition of a term of art. Later in the Bill when we come across the same phrase or clause or word in another clause, one has to thumb backwards and forwards through various clauses until one finds the clause containing the definition. . . .

" We go backwards and forwards through the Bill trying to find which definition applies to the wording under consideration at a particular moment. Would it not be possible, for the sake of convenience, to compile a glossary of all the terms of art used in the measure and put them all together in one clause at the end of the Bill so that, when one came across wording which appeared to have a special meaning, one could turn to one clause and find it easily without having to read through 135 pages before reaching the right clause? "

—Mr. Hugh Rossi, the Hon. Member for Hornsey, on the Land Commission Bill, Standing Committee E, Official Report, col. 619.

This Appendix is not the glossary of Mr. Rossi's desire but it does contain a list of *all* the expressions (no less than 188 in number) which are given specialised definition or meaning whenever the Act (including the Schedules to the Act) makes use of them.

That the number of such specially defined expressions is so large is a chastening reflection upon the complexity of the legislation comprised in the Act.

The object of listing these specialised expressions in this Appendix is to give the reader an opportunity of casting his eye over them *en masse*, thereby alerting him to the need for care in the construing of any one of them whenever he comes across such a one as he works his way through the pages of the Act.

In Part I of the Act the following expressions have special definition or meaning:

the Commission: s. 1 (1)

the first appointed day: s. 1 (1)
the fund: s. 2 (1)

In Part II of the Act the following expressions have special definition or meaning:

the second appointed day: s. 6 (4)
general vesting declaration: s. 9 (2) and s. 26 (1)
local authority area: s. 11 (6)
building by-laws: s. 13 (4)
building regulations: s. 13 (4)
Crown land: s. 13 (4)
crownhold disposition: s. 17 (2) and s. 26 (1)
crownhold covenant: s. 17 (3) and s. 26 (1)
crownhold interest: s. 17 (3) and s. 26 (1)
concessionary crownhold disposition: s. 18 (2) and s. 26 (1)
the crownhold land: s. 18 (4) and s. 20 (1)
successor of the covenantor: s. 19 (5)
the specified land: s. 22 (1)
the owner: s. 22 (2)
material interest: s. 22 (6)
the specified entries: s. 25 (7)
the Acquisition of Land Act: s. 26 (1)
the current development plan: s. 26 (1)
land: s. 26 (2)
minor tenancy: s. 26 (3)
long tenancy which is about to expire: s. 26 (3)

In Part III of the Act the following expressions have special definition or meaning:

betterment levy: s. 27 (1)
chargeable act or event: s. 27 (3) and s. 85 (1)
the prescribed rate: s. 28 (2)
the relevant land: s. 29 (5), s. 30 (5), s. 31 (5), s. 33 (5), s. 34 (5) and s. 41 (4)
the relevant interest: s. 29 (5), s. 31 (5), s. 33 (5), s. 34 (5) and s. 41 (4)
the grantor: s. 29 (5), s. 30 (5), s. 34 (5) and s. 73 (2)
the grantee: s. 29 (5), s. 30 (5), s. 34 (5) and s. 41 (4)
the relevant date: s. 29 (5), s. 30 (5), s. 31 (5), s. 33 (5) and s. 34 (5)
the relevant project: s. 31 (5)

developing owner: s. 32 (5) and s. 85 (1)
assessable interest: s. 32 (7) and s. 85 (1)
the relevant order or decision: s. 33 (5)
the land principally affected: s. 34 (6)
material interest: s. 38 (6)
notice of assessment of levy: s. 44 (1) and s. 85 (1)
the objector: s. 47 (1)
operative assessment of levy: s. 49 and s. 85 (1)
charity: s. 57 (6)
organisation: s. 57 (6)
charitable: s. 57 (6)
housing association: s. 59 (4)
the owner: s. 61 (1)
the building of a dwelling-house: s. 61 (6)
the builder or developer: s. 62 (1)
builder or developer of residential property: s. 62 (7)
the provision of housing accommodation: s. 62 (8)
the building of houses, flats or other dwellings: s. 62 (8)
project of material development: s. 64 (1) and s. 85 (1)
specified operation: s. 64 (3) and s. 85 (1)
hereditament: s. 65 (5)
the additional development: s. 66 (1)
the larger project: s. 67 (1)
the existing operations: s. 67 (1)
Crown land: s. 75 (2) and (6)
private interest: s. 75 (2) and (6)
Crown interest: s. 75 (6)
Duchy interest: s. 75 (6)
the appropriate authority: s. 75 (6)
the offender: s. 80 (1)
mining lease: s. 85 (1)
minor tenancy: s. 85 (1)
restrictive right: s. 85 (1)
the relevant Schedules: s. 85 (1)
contingent local land charge: s. 85 (2)
the surrender of a tenancy: s. 85 (3) (*a*)
the creation of a tenancy: s. 85 (3) (*b*)
term of years granting, renewing or extending a tenancy: s. 85 (3) (*c*)
the purpose of assessing levy: s. 85 (6)

In Part IV of the Act the following expressions have special definition or meaning:

ecclesiastical property: s. 90 (3)
ecclesiastical corporation: s. 90 (3)
director: s. 97 (2)

the Act of 1962	s. 99 (1)
the Scottish Act of 1845	
the Scottish Act of 1945	
the Scottish Act of 1947	
the Scottish Act of 1954	
the appropriate Minister or Ministers	
disposition	
the Ministers	
the first appointed day	
the second appointed day	
the planning Minister	
prescribed	
registered land	

material development: s. 99 (2)
general development order: s. 99 (2)
before the first appointed day: s. 99 (4)
works: s. 99 (7)

In Schedule 3 to the Act the following expressions have special definition or meaning:

notice of objection to severance: para. 4 (1)
the land proposed to be severed: para. 5
rent charge: para. 15 (4)

In Schedule 4 to the Act the following expressions have special definition or meaning:

the tenancy: para. 6
the disposition: para. 6
the chargeable interest: para. 6
the superior tenancy: para. 8, para. 24
the sub-tenancy: para. 24
the existing site: para. 34 (2)
the chargeable owner: para. 41 (2)
predecessor: para. 41 (2)
adjacent land: para. 41 (2)

In Schedule 5 to the Act the following expressions have special definition or meaning:

the chargeable act or event: para. 1, para. 22 (1)
the chargeable interest: para. 2 (1)
the chargeable owner: para. 2 (1)
disposition falling within the antecedent period: para. 2 (2)
the last relevant disposition: para. 6
the contact: para. 19
related tenancy: para. 22 (2)
the previous current use value: para. 25, para. 28

In Schedule 6 to the Act the following expressions have special definition or meaning:

reversion: para. 12 (2)
apportioned: para. 14 (4)
apportionment: para. 14 (4)
other land: para. 14 (4)
the previous disposition: para. 16 (1)
the Case D or Case E land: para. 16 (1)
the chargeable unit: para. 18 (5)

In Schedule 7 to the Act the following expressions have special definition or meaning:

the chargeable act or event: para. 1 (1)
the deceased: para. 1 (1)
the dutiable interest: para. 1 (1)
predecessor: para. 1 (3)
the gain attributed to the disposal: paras. 15 (1) and 16 (1)
the first taxable disposal: para. 17 (1)
notice of claim: para. 25 (1)
the claimant: para. 26 (1)
the rules: para. 29 (2)
the chargeable interest: para. 35
the chargeable owner: para. 35
the last relevant disposition: para. 35

In Schedule 8 to the Act the following expressions have special definition or meaning:

the part or parts fulfilling the relevant conditions: para. 6
the interest comprised in the disposal: para. 14 (1)

the taxpayer: para. 17
the relevant year or period: para. 17
tax: para. 17
the increase (if any) in the current use value of the chargeable interest: para. 18 (1)
material development: para. 18 (5)
the excess gain: paras. 20 (3) and 22 (3)
the relevant taxable disposal: para. 23 (1)
the first separate disposal: paras. 23 (1) and 24 (1)
the second separate disposal: para. 23 (1)
the previous chargeable act or event: para. 24 (1)
the subsequent chargeable act or event: para. 24 (1)
year of assessment: para. 33 (1)
Company: para. 33 (1)
accounting period: para. 33 (1)
the assumed tax condition: para. 34 (1)
disposal: para. 34 (3)
the corresponding acquisition: para. 34 (3)
inspector: para. 35 (1)
the appropriate inspector: para. 35 (1)
the chargeable interest: para. 36 (1)
the chargeable owner: para. 36 (1)
disposition falling within the antecedent period: para. 36 (2)
if the antecedent period had extended to the first appointed day: para. 36 (2)

In Schedule 9 to the Act the following expressions have special definition or meaning:
the other interest: para. 2 (1)
the subsequent chargeable act or event: para. 6 (1)
the chargeable interest: para. 6 (2)
related tenancy: para. 7 (2)
betterment: para. 12 (2)

In Schedule 10 to the Act the following expression has special definition or meaning:
the disposition: para. 1

In Schedule 11 to the Act the following expressions have special definition or meaning:

subsequent chargeable act or event: para. 1
the previous chargeable act or event: para. 1
the credit: para. 5 (1) and (2) and (3)
the original chargeable interest: para. 5 (1) and (2)
the original chargeable unit: para. 5 (1) and (2)
the original chargeable owner: para. 5 (1) and (2) and (3)
the land previously affected: para. 5 (3)
the interest previously affected: para. 5 (3)
the primary amount: para. 10 (1)

In Schedule 12 to the Act the following expressions have special definition or meaning:

person prospectively liable to levy: para. 1
the levy: paras. 2 and 3
the chargeable interest: paras. 2 and 3
net capital proceeds: para. 4 (1)
the deceased: paras. 5 (1) and 9 (1) and 11 (1)
the Probate Judge: para. 10 (2)
Company: para. 20
debenture: para. 20

In Schedule 13 to the Act the following expressions have special definition or meaning:

company: para. 1
subsidiary: para. 1
registered industrial or provident society: para. 1
the chargeable interest: para. 3 (6)
relative: para. 5 (8)
settlement: para. 5 (8)
settlor: para. 5 (8)
Company: para. 5 (8)
the chargeable act or event: para. 6 (1)
the Company: para. 6 (1)
capital distribution: para. 6 (7)
the beneficiary: para. 10

INDEX

INTRODUCING

The Land Commission Act

Desmond Heap, LL.M., P.P.T.P.I.

Comptroller and City Solicitor to the Corporation of London
Member of the Council of the Law Society
Member of the Council of the Royal Institution of Chartered Surveyors
Member of the Council and Past President of the Town Planning Institute
General Editor: Encyclopedia of Town and Country Planning

Anyone tackling the Land Commission Act, without the benefit of this introduction, is causing himself unnecessary difficulty. Desmond Heap's professional audiences on the subject will know his clear, concise and expert approach. His book is the same : not just a "lawyer's" book, but a common-sense and careful handbook on the Land Commission Act, what it means, what can or cannot be done, with what consequences.

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